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The case of State v. Thompson, just decided by the Supreme Court of the United States on writ of error to the Supreme Court of Missouri, involves an interesting construction of the provision of the United States Constitution forbidding the States from passing *ex post facto* laws. The defendant in the case, it appeared, was indicted for murder. The evidence against the accused was entirely circumstantial in its nature. One of the issues of fact was as to the authorship of a certain prescription for strychnine, and of a certain letter addressed to the organist of the church containing threatening language about the sexton. The theory of the prosecution was that the accused had obtained the strychnine specified in the prescription and put it into food that he delivered or caused to be delivered to the deceased with intent to destroy his life. The accused denied that he wrote either the prescription or the letter to the organist, or that he had any connection with either of those writings. At the first trial certain letters written by him to his wife were admitted in evidence for the purpose of comparing them with the writing in the prescription and with the letter to the organist. The supreme court of the State upon the first appeal held that it was error to admit in evidence for purposes of comparison the letters written by Thompson to his wife, and for that error the first judgment was reversed and a new trial ordered. 132 Mo. 301, 324. Subsequently, the General Assembly of Missouri passed an act which became operative in July, 1895, providing that "comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute." Laws Mo. 1895, p. 284. At the second trial, which occurred in 1896, the letters written by the accused to his wife were again admitted in evidence, over his objection, for the purpose of comparing them with the order for strychnine and the letter to the organist. This action of the trial court was based upon the above statute of 1895. The contention of the accused was that as the letters to his wife were not, at the time of the commission of the alleged offense, admissible in evidence for the purpose of comparing them with other writings charged to be in his handwriting, the subsequent statute of Missouri changing this rule of evidence was *ex post facto* when applied to his case. Mr. Justice Harlan, speaking for the court, while conceding that the position of the accused finds apparent support in the general language used in some opinions, particularly Kring v. Missouri, 107 Mo. 221, and Calder v. Bull, 3 Dall. 386, held that the statute of Missouri is not *ex post facto* when applied to provisions for crimes committed prior to its passage, but he distinctly announced that the court, in the decision of this case, means now only to adjudge that the statute is to be construed as one merely regulating procedure and may be applied to crimes committed prior to its passage without impairing the substantial guarantees of life and liberty that are secured to an accused by the supreme law of the land.

Many puzzling questions are arising in connection with the operation of the new War Stamp Act. Among many to which our attention has been called, is that as to the validity of a document requiring stamps, but upon which stamps have been omitted. On that question a case which arose under the former law, the provisions of which were substantially similar to the present, will be of interest. Dowell v. Applegate, 7 Fed. Rep. 881, decided by the United States Circuit Court for the District of Oregon. It was there held that section 152 of the Internal Revenue Act, as amended, while it avoids the record of a deed not duly stamped, or upon which the stamp is not canceled, does not affect the validity of the original. Section 156 of said act imposes a penalty upon the vendor for not canceling a stamp put upon his conveyance, but does not affect the validity of the conveyance itself. Section 158 of said act, as amended by the act of July 13, 1866, imposes a penalty upon the maker for not duly stamping his conveyance, or omitting to cancel a stamp thereon, and declares the same void if either omission was made "with intent" to defraud the government, but who-

ever seeks to set aside or avoid a conveyance on that ground must allege and prove such fraudulent intent.

An allegation that a conveyance was made and stamped for less than the actual consideration, with intent to aid or give color to a former fraudulent conveyance of the same premises to the grantor, or that such conveyance was made and stamped for an 'inadequate' consideration, does not show that such conveyance was not duly stamped with intent to evade the Stamp Act.

See also Kinney v. Consolidated V. M., 4 Sawyer, 382.

The present act, after providing a penalty for failure to affix and cancel the stamp, provides that "such instrument, document or paper not being stamped according to law, shall be deemed invalid and of no effect." As to this the *New York Law Journal*, in the course of an article on this subject, says: "Nevertheless, although an unstamped instrument is thus pronounced invalid and of no effect, so many *loci pœnitentiæ* are expressly provided, that is, such comprehensive provision is made for making instruments valid and regular by *ex post facto* stamping, that we doubt whether an unstamped instrument can fairly be said to be void in any sense. It is true the act provides that 'no right acquired in good faith before the (*ex post facto*) stamping of such instrument or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such (*ex post facto*) stamping as aforesaid.' Some tangible questions of conflicting rights may arise under this provision, but the general policy of the new stamp law, like that of the former law, evidently does not lean toward avoiding instruments for non-compliance with its provisions."

NOTES OF IMPORTANT DECISIONS.

CONSTITUTIONAL LAW—JURY TRIAL IN CRIMINAL CASE—TERRITORIES—NUMBER OF JURORS.—The Supreme Court of the United States decides, in Thompson v. State of Utah, 18 S. C. Rep. 620, that the provisions of the federal constitution relating to trials by jury for crimes and to criminal prosecutions apply to the territories of the United States; that the jury referred to in the constitution and in the sixth amendment thereto, which guaranty a jury trial in criminal prosecutions, is a jury constituted of 12 jurors, as at common law, and that it was not competent for the State of Utah, on its admission into the Union, to provide that persons charged with the commission of felony within its limits while a territory should be tried otherwise than by a jury such as is provided for by the constitution of the United States, and provisions of the State constitution for the trial, in courts of general jurisdiction, of criminal cases not capital, by a jury composed of 8 persons, is, in its application to such cases, *ex post facto* legislation, and void. Mr. Justice Brewer and Mr. Justice Peckham, dissent.

CONTRACT TO MAKE A WILL—SPECIFIC PERFORMANCE.—There is no rule of law or policy which stands in the way of parties agreeing between themselves to execute mutual and reciprocal wills, which, though remaining revocable upon notice being given by either of an intention to revoke, become, upon the death of one, fixed obligations, of which equity will assume the enforcement, if attempted to be impaired by subsequent testamentary provisions on the part of the survivor; but, to invoke the intervention of equity, it is not sufficient that there are wills simultaneously made, and similar in their cross provisions, but the existence of a clear and definite contract must be shown, either by proof of an express agreement, or by unequivocal circumstances. These propositions are laid down by the Court of Appeals of New York in Edson v. Parsons, 50 N. E. Rep. 266. It appeared in that case that two sisters, elderly maiden ladies, living together, and very closely united by affection, and in habits, associations and ideas, and also both very much attached to a brother, made their wills, at the same time, under the supervision of their counsel, with whom they had consulted about them. The wills were alike, and each gave to the sister of the testatrix three-fourths of the residuary estate, and the remainder of the other fourth, after paying from it certain legacies, and provided that if the testatrix should survive her sister, or if her sister, surviving her, should die before her will was proved, all the residue of her estate, after paying certain legacies, should go to her brother. After the death of one of the sisters, the survivor made a different will, and upon her death the brother attempted to establish the provisions of the first will, as a contract between the sisters to give their property ultimately to the brother. It was held that the making of the wills, and the other circumstances shown, did not establish such a contract, as a matter of law.

TRUSTS — CONVERSION FOLLOWING TRUST FUNDS—PREFERRED CLAIMS.—The case of State v. Bank, 75 N. W. Rep. 28, decided by the Supreme Court of Nebraska, involves many interesting questions of the law pertaining to trust funds. The points decided were as follows: The beneficiary of a trust fund, solely because of the character of his claim, is not entitled to the payment of the same in full, to the exclusion of the other creditors, out of the assets of the insolvent trustee

estate. When trust funds are wrongfully converted, the beneficiary is entitled to the funds themselves, or the proceeds of the investment of them, so long as he can definitely trace them, and before they reach the hands of an innocent holder. When a trustee wrongfully commingles trust money with his own, and makes payment from the common fund, it will be presumed that he paid out his own money, and not the trust money. When trust funds are wrongfully converted, and not only do not remain in the hands of, and are not found among the assets of, the wrongdoer, but are actually traced out of his hands, and shown to have been dissipated, then the beneficiary of the trust fund is not entitled to have his claim allowed, as a preferred one, against the estate of the insolvent wrongdoer. If the trust property consisted of money, the claim of the beneficiary of the trust fund may be preferred, to the extent of the cash found among the assets of the insolvent trustee at the time of his failure, unless it affirmatively appears that such cash assets are not part of the trust fund. A county treasurer is a trustee of moneys which come into his hands by virtue of his office; and if he wrongfully deposits them to his own credit in a bank aware of their character, which afterwards becomes insolvent, the county is entitled to have its claim decreed a first lien upon any asset of the insolvent bank which it shows is the product of its moneys. It appeared that a county treasurer wrongfully deposited to his own credit in the Bank of Commerce $15,860.18 of public funds, the bank being aware of their character. The bank failed, having in its vaults only $140 in cash. It had used the treasurer's deposit in paying off its other depositors. It was not shown that any part of this public money was represented by, or embraced in, any asset of the bank which came into the possession of its receiver. It was held (1) that the county was entitled to reclaim the $140, as being part of the trust fund; (2) that it was not entitled to have its claim against the insolvent bank decreed a first lien upon the other assets thereof.

HOMESTEAD — FORFEITURE.—Const. Ark. art. 9, § 6, provides that the widow of one who dies leaving a homestead shall be entitled to the homestead. It was held by the Supreme Court of Arkansas, in Duffy v. Harris, 45 S. W. Rep. 545, that a wife who deserts her husband, and lives in adultery in another State, does not thereby forfeit her right to the homestead after her husband's death. The court says: "It would seem that the language of this section of the constitution settles the question involved in this suit. The appellee had never been divorced from her husband, and she was unquestionably his widow. How, then, can she be debarred of her homestead right, without reading into the constitution an exception or provision it does not contain, to the effect that if the wife abandon her husband, and is guilty of immoral and unwifely conduct, she shall forfeit her right thereby to the homestead? We think such a construction unwarranted and untenable. We are aware that it has been held otherwise in Texas and some other States. Trawick v. Harris, 8 Tex. 312; Earle's Exrs. v. Earle, 9 Tex. 630; Sears v. Sears, 45 Tex. 559; Prater v. Prater, 87 Tenn. 78, 9 S. W. Rep. 361; Shingle Co. v. McKenna, 86 Mich. 283, 48 N. W. Rep. 959. On the other hand, we find that in the case of Meader v. Place, 43 N. H. 308, and cases therein cited, it is held that the abandonment by the wife of her husband, and living apart from him, in another State, does not forfeit her right to the homestead upon the death of the husband. In this State it is held that the domicile of the wife follows that of the husband; and we understand this to be the rule, and that the fact that she abandons her husband, and lives apart from him, in another State, will not form an exception or cause her to forfeit her right to the homestead. She is not a non-resident, while her husband is a resident. Her legal *status*, as to this, is governed by that of the husband. Meader v. Place, 43 N. H. 308; Johnston v. Turner, 29 Ark. 280, and cases; Thomp. Homest. & Exemp. §§ 73, 77; Atkinson v. Atkinson, 40 N. H. 249. 'The wife, though living separate, might have returned to her duty at any time.' He owed her protection and support, as long as the relation of husband and wife existed by law. And the desertion of the wife could not alter his legal *status*. He was still the head of a family, entitled to a homestead; and, as long as the relation of husband and wife existed *de jure*, the appellee was his wife, and at his death was his 'widow,' and entitled, under the constitution, to the right of the homestead. Const. 1874, art. 9, § 6; Gates v. Steele, 48 Ark. 539, 4 S. W. Rep. 53; Stanley v. Snyder, 43 Ark. 429. A majority of the court is of the opinion that, under the constitution and laws of this State, the appellee is, in law, the widow of Dan Harris, and that she has not, by her abandonment of him, and living apart from him, in another State, forfeited her right to his homestead, however reprehensible her conduct morally may have been."

PRINCIPAL AND SURETY — CONDITION AS TO SIGNING BOND — VALIDITY.—In Benton County Sav. Bank v. Boddicker, 75 N. W. Rep. 632, it was held by the Supreme Court of Iowa, that where a bond is delivered by a principal in violation of a condition on which it was signed by the sureties, the obligee may nevertheless recover thereon if he was ignorant of the conditions on which the sureties signed. The court said in part: "In Daniels v. Gower, 54 Iowa, 319, 3 N. W. Rep. 424, and 6 N. W. Rep. 525, a recovery was sought against the sureties on a non-negotiable promissory note. Three of the sureties signed the note when it was in the hands of one Stoller, with the agreement that it should not be delivered unless the signature of one Blajok should be obtained. It was held that if Stoller was not the agent of the plaintiff, and the note was delivered without the knowledge and consent of the three sureties, in

violation of the condition upon which it had been placed in the hands of Stoller, the sureties would not be liable. The correctness of that decision was questioned in Taylor Co. v. King, 73 Iowa, 153, 34 N. W. Rep. 774, and the fact was pointed out that it rested in part upon the supposed authority of Pepper v. State, 22 Ind. 399, which has been overruled in State v. Pepper, 31 Ind. 76, and in part upon the case of Ayres v. Milroy, 53 Mo. 516, which was examined and questioned, if not distinguished, in State v. Potter, 63 Mo. 212. The case of People v. Bostwick, 32 N. Y. 445, tends to sustain the doctrine of Daniels v. Gower, but was questioned in Russell v. Freer, 56 N. Y. 67, although it was cited in Whitford v. Laidler, 94 N. Y. 145. In some cases a distinction has been suggested between official bonds and other non-negotiable instruments, based upon grounds of public policy. Carroll Co. v. Ruggles, 69 Iowa, 269, 28 N. W. Rep. 590; Taylor Co. v. King, 73 Iowa, 153, 34 N. W. Rep. 774. But, although there are a few authorities which support the rule of Daniels v. Gower, the greater number do not. See Butler v. U. S., 21 Wall. 272; Dair v. Same, 16 Wall. 1; White v. Duggan, 140 Mass. 18, 2 N. E. Rep. 110; Ordinary v. Thatcher, 41 N. J. Law, 403; Quick v. Milligan, 108 Ind. 419, 9 N. E. Rep. 392; Russell v. Freer, 56 N. Y. 67; State v. Peck, 53 Me. 284; State v. Pepper, 31 Ind. 76; McCormick v. Bay City, 23 Mich. 457; Millett v. Parker, 2 Metc. (Ky.) 608; State v. Potter, 63 Mo. 212, and cases therein cited; Cutler v. Roberts, 7 Neb. 4; Nash v. Fugate, 32 Gratt. 595; Jordan v. Jordan, 10 Lea, 124; Tidball v. Halley, 48 Cal. 613; City of Chicago v. Gage, 95 Ill. 613. The ground upon which some of these decisions are based is that, where sureties have placed in the hands of their principal an instrument which purports to be valid and complete, they are estopped to assert, as against an innocent holder for value, that they did not execute it. In this case, if the testimony for the plaintiff be credible, the defendants executed what purported to be a valid bond, complete, excepting that the names of the sureties were not inserted, and intrusted it to the principal. He delivered it wrongfully, it is said, but the plaintiff had no knowledge of that fact, nor of any circumstances which should have caused it to inquire as to the condition on which the bond was signed. We do not think that, in the absence of such knowledge, the plaintiff refrained at its peril from making inquiry as to the signing of the bond. It is a rule of general application that when one of two innocent parties must suffer loss it should fall upon the one whose acts caused it. Quick v. Milligan, *supra*. We reach the conclusion that the doctrine of Daniels v. Gower, which we have considered, is contrary to reason and the weight of authority, and so far as the case announces that doctrine it is overruled. If it be shown that the bond was delivered by the principal in violation of the condition on which it was signed by the sureties, nevertheless the plaintiff may recover if it shows that it received the bond in good faith, for a sufficient consideration, without knowledge or notice of the condition upon which the defendants signed it."

ACTION FOR FRAUD—DAMAGES—REWARD.—It appeared, in Smitha v. Gentry, 45 S. W. Rep. 515, decided by the Court of Appeals of Kentucky, that plaintiffs had tracked to a certain house a suspected criminal, for whose capture a reward was offered by the State. They made arrangements with the occupant of the house that he should find out if the suspected man was the one desired, and if so he was to telephone plaintiffs or the constable at A. Becoming convinced of the criminal's identity, he telephoned to the station at A, over a private line, and the person receiving the message, by claiming he was the constable, obtained the information, captured the criminal and received the reward. It was held that the plaintiffs could not recover the amount of the reward from the person receiving it, since the damages were too remote and their injury was only the loss of a naked possibility. The following is from the opinion of the court: "Assuming it to be true, as the jury appears to have found, that Smitha falsely represented himself as being the constable at Athens, for the purpose of preventing Stivers and Gentry from obtaining the reward, and of obtaining it itself, the question is presented whether damages for such fraud and deceit are recoverable. We have been referred to no authority which is directly in point upon this question, but the analogies seem to us to be against the right to recover such damages. The injury complained of being neither to person nor character, such damages as might be recoverable must be for injury to property rights, and we are unable to see that any property right of appellees has been invaded in such a way as to authorize the rendition of a verdict for more than nominal damages. Assuming that Smitha was undertaking to run a pay telephone station, and undertook to deliver the message to the constable, it would seem that nominal damages might have been recovered (Sedg. Meas. Dam., 8th Ed., § 97); and so if, having held himself out to the public as operating a telephone station for hire, he intercepted and suppressed a communication forwarded by the agent of appellees. But the basis of the recovery had in this case was evidently the loss by appellees of the reward which they expected to obtain for the arrest of the fugitive, and this seems to us to be at once too remote and too contingent an item of damage to sustain a recovery. It is uncertain whether the gain would have been realized. The chance is too remote to be estimated.

"In Hutchins v. Hutchins, 7 Hill, 104, where the defendants, after a will had been made and executed devising certain real estate to the plaintiff, conspired with each other to induce the testator to revoke it, and effected their object by false and fraudulent representations, held, that the plaintiff could not maintain an action, as the damage which he sustained was merely by reason of being de-

prived of an expected gratuity, and not by an interference with any of his rights. 'The plaintiff had no interest in the property of which he alleges he has been deprived by the fraudulent interference of the defendants beyond a mere naked possibility, an interest altogether too shadowy and evanescent to be dealt with by courts of law.' So, in an action for false imprisonment, the plaintiff offered to prove that, having been imprisoned til after 2 o'clock, and being unwell from the imprisonment, he did not go to a place where he would have received a situation, if he had appeared there at 2 o'clock. The alleged damage was held too remote. Hoey v. Felton, 31 Law J. C. P. 105. And the loss of an office for which application had been made before an assault and battery, but withdrawn on account of disability occasioned by the battery, was held too unconsequential. Brown v. Cummings, 7 Allen, 507. In Boyce v. Bayliffe, 1 Camp. 58, to show how far attempts of the kind might be carried if the necessary connection were not insisted on, Lord Ellenborough alluded to a case cited by Lord Alvanley, where the plaintiff complained of false imprisonment, *per quod*, being confined on shore, he lost a lieutenancy. So, in the case of Telegraph Co. v. Crawl, 39 Kan. 580, 18 Pac. Rep. 719, where the telegraph company inaccurately transmitted a message ordering a race horse sent to a certain place, as the result of which the horse was sent to the wrong place, and could not be entered in the race, it was held that the owner could not recover for the loss of the purse which the horse might have won. And see Sedg. Meas. Dam. (8th Ed.) § 200, and 1 Suth. Dam. § 29. As said by Metcalf, J., in Walker v. Goe, 3 Hurl. & N. 395, cited in 1 Suth. Dam. § 30. 'The fact that the plaintiff has suffered actual damage from the defendant's conduct is not capable of legal proof, because it is not within the compass of human knowledge, and therefore cannot be shown by human testimony. It depends on numberless unknown contingencies and can be nothing more than a matter of conjecture.' This language seems to us to apply with peculiar force to the case at bar. It cannot be assumed that appellees, had they received the message, would have effected the capture. As a matter of fact, they introduced no testimony that they would have attempted it had they received the information; and for this reason the motion for a peremptory instruction should have been sustained, even if it were held that a cause of action was disclosed by the petition. In Telegraph Co. v. Hall, 124 U. S. 444, 8 Sup. Ct. Rep. 577, where a telegraphic message directing the purchase of oil was not delivered until after a rise in price, and no purchase was made, it was held that, it not appearing that the oil would have been sold at that time if it had been bought, nominal damages only were recoverable. In the case at bar the injury complained of is the loss of the reward. The reward was open to any person who might be able to effect the arrest. Until it was earned, no one had any property rights in it. All that these appellees were deprived of, therefore, was the opportunity to make an attempt to earn the reward before some one else should do so; and this seems to us to be very closely analogous to an opportunity to contest for the prize in a competition open to the public, or to enter a horse in a race for a purse. So many contingencies might have prevented the success of their proposed attempt—such as the lameness of a horse, a mistake in the road, a delay of 10 minutes—that the injury resultant from deprivation of opportunity to compete for the reward is too remote and unsubstantial to form the foundation of an action at law. It was not shown, and it was impossible to show, that appellees would have captured the fugitive. Consequently, there is no way of showing that any loss or damage was suffered by them, except a nominal one, upon the supposition before referred to. Their injury was the loss of a naked possibility."

LIFE INSURANCE—INSURABLE INTEREST.—The Supreme Court of Rhode Island, in Cronin v. Vermont Life Ins. Co., 40 Atl. Rep. 497, holds that an aunt has an insurable interest in the life of her niece, living with her at different times from early childhood and whom she supported. The following is from the opinion of the court: "In Warnock v. Davis, 104 U. S. 775, Field, J., said: 'It is not easy to define with precision what will constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relations of the party obtaining the insurance, either as creditor of or surety for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life.' We think that this states a reasonable rule, and that it is now substantially the accepted rule. The demurrer in this case being to the whole declaration, we need not examine the counts in detail. The important facts are that the niece lived with the aunt from early childhood at different times, amounting to years; that their relations were as those of mother and daughter; that the plaintiff supported her niece, the insured; and that a debt, both of affection and of money, was due to the plaintiff, for which she expected, and had a right to expect, return from the insured. Does this set out an insurable interest? We do not understand the word 'debt,' as here used, to mean a debt recoverable at law, but a moral obligation, from which the plaintiff had the right to expect care and kindness from the niece in case of need. Taken in this view, we think it shows an insurable interest, under the principles above laid down. In Lord v. Dall, 12 Mass. 115, it was held that a sister had an insurable interest in the life of a brother, who stood to her *in loco parentis*. The court said: 'In common understanding, no one would hesitate to say that in the life of such a brother the sister had an interest.' The latter case of Loomis v. Insur-

ance Co., 6 Gray, 396, involved the question of the interest of a father in the life of a minor son; but Shaw, C. J., said that, upon broader and larger grounds, independently of the fact that the son was a minor, and that the assured had a pecuniary interest in his earnings, the court was of opinion that the father had an insurable interest. These broader grounds appeared further on to be 'consideration of strong morals, and the force of natural affection between near kindred, operating often more efficaciously than those of positive law.' In Insurance Co. v. France, 94 U. S. 561,—a case between brother and a married sister, not dependent—Bradley, J., goes so far as to say: 'Any person has a right to procure insurance on his own life, and to assign it to another, provided it be not done by way of cover for a wager policy; and where the relationship between the parties, as in this case, is such as to constitute a good and valid consideration in law for any gift or grant, the transaction is entirely free from such imputation. The direction of payment in the policy itself is equivalent to such an assignment.' In Elkhart v. Houghton, 103 Ind. 286, 2 N. E. Rep. 763, the insurable interest of a grandson in the life of a grandfather, with whom he lived, was upheld. It has also been sustained where there was no kinship, as in the case of a woman who was engaged to be married to a man (Chisholm v. Insurance Co., 52 Mo. 213), and in the case of a widow and her son-in-law, who lived together. Adams v. Reed (Ky.), 38 S. W. Rep. 420.

The principle of these and other like cases is that the interest does not depend upon any liability for support, nor upon any pecuniary consideration, nor even upon kinship. It may be for the benefit of the old or the young, where the relation between the parties is such as to show a mutual interest, and to rebut the presumption of a mere wager. The contract is complete and legal in itself, and, when considerations of public policy do not prohibit its enforcement, there is no reason why it should not be carried out. The declaration in this case shows that the plaintiff's claim is not objectionable on the grounds of public policy. It shows that the relation of the plaintiff and her niece had been of such a character that each had reason to rely upon the other in case of need. Should the younger die first, the help and care which might have been expected from her in the declining years of the aunt could only be supplied by insurance on her life. This is no more speculation than a husband's provision for his wife in the same way. It is natural and reasonable, and in accordance with modern business methods. In short, it is security for an insurable interest. We, therefore, think that the contract set out in the declaration is valid, since it falls within the proper line of distinction between valid contracts, where there is mutual interest, and invalid contracts, which are evidently mere speculation.

EFFECT ON THE EXEMPTION RIGHTS OF THE ENCROACHMENT OF A TOWN OR CITY UPON A RURAL HOMESTEAD.

The exemption laws of the various States, setting apart as execution proof certain land as a homestead, are enacted for the purpose of securing to the head of a family or married person a permanent home or abiding place, in which he may feel secure from the claims of creditors, and upon which himself and family may live in the enjoyment and security thereof, and not be driven about from pillar to post by harassing or other kind of creditors. These laws, it at once appears, are intended for a beneficent purpose in shielding the family from want and the hardships incident to misfortune when they would have no place to go or claim as a home. This being the aim of the law, statutes and constitutional provisions, though, in a sense, modifying the common law, receive a liberal construction by the courts to the end that the purpose of the exemption laws may be fully sustained and as fully enjoyed by those entitled to them. As a rule, the allowance of land in the country is not circumscribed within such narrow limits as when the homestead is located in a city or town. The reason of this is obvious, and is at least two-fold. One reason is, a large tract of land in the country may not be so valuable as a very small one in a city or town, and the value of the homestead is always taken into consideration, at least this is generally true. Another reason of the liberal allowance of land for a rural homestead is, those who live in the country generally follow agricultural or some other pursuits which require larger bodies of land than is usually required for those who live in a city, for such employment as farming on anything like a large scale is entirely impracticable in a town or city. The inhabitant of a city needs, ordinarily, only a small parcel of land for his home, for, by reason of his environments, it is not practicable, for many reasons, to keep up and maintain a large piece of ground for a home place. Where a person having an agricultural homestead of twenty acres, which is exempt from sale under execution by virtue of the law pertaining to the homestead right, the owner does not lose his right by the annexation of his land to a town

or city by legislative enactment or otherwise, when against his will, and he continues to use it as a farm, or for other rural purposes, the same as before, and does not lay it off into lots and blocks and sell it, or otherwise recognize the annexation.[1] And where the head of a family had acquired a rural homestead of seventeen acres adjoining an incorporated town, it was held that he had thereby acquired a vested right of which the legislature could not deprive him by taking his land as part and parcel of a town or city.[2] In this instance, the Supreme Court of Texas, in disposing of the question, *inter alia*, said: "It is conceded, without hesitation, that the legislature could confer power upon the inhabitants of a village to incorporate themselves into a town. But it is not conceded that the legislature of the State is at liberty to give authority to a number of people by a vote of a majority of them to dedicate property of those of them who refuse their assent to any local municipal purposes."[3] A like question came before the Supreme Court of Arkansas in the case of Chambers v. Perry.[4] The precise question was waived by the learned tribunal, however, as the case was disposed of on other grounds. But the court evidently leaned to the theory that the encroachment upon the rural homestead, once vested before the change, could not affect the rights thus fixed in law. In a later case, the same court held that no part of a rural homestead was lost because a corner of it jutted out into the limits of an adjoining town.[5] This decision is under the constitutional provision of Arkansas, assuring to every married person, or the head of a family, a homestead of one hundred and sixty acres of land when not within any town or city, and a smaller tract when otherwise. The Minnesota court had a struggle with the question in Baldwin v. Robinson,[6] which may be considered a leading case, at least in that State. The question arose under a statute exempting from seizure and sale upon process "a homestead consisting of any quantity of land not exceeding eighty acres, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in the laid out or platted portion of any incorporated town, city or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot if within the laid out or platted portion of any incorporated town, city or village, having over five thousand inhabitants, or one-half acre within the laid out or platted portion of any town, city or village, having less than five thousand inhabitants, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of this State." The piece of ground in controversy in this case was 165 by 180 feet, was within the city of Minneapolis, a city of much more than five thousand inhabitants, but when the homestead was acquired and the character of the land impressed as such, it was exempt under the law. The court sensibly felt the difficulty of deciding this case, but sustained the right of homestead in the following language: "As plaintiff was entitled to the entire tract as a homestead before other persons laid out and platted the adjoining lands, the right remains. It cannot be taken away except by legislation in plain and unambiguous terms. Such a purpose cannot be inferred. The owner of the homestead may plat it into lots and blocks, if he chooses, and thus voluntarily reduce it to half an acre, or, depending upon its locality, to the size of an ordinary lot. Or a resident of the State, desiring to avail himself of the homestead rights, may select it within the laid out or platted portion of a town, city or village; but it would seem unjust and inequitable to say, after the choice is made and the homestead selected, that its area can be controlled, regulated or reduced by other persons not acting in a legislative capacity." And, again, where a citizen of Iowa had impressed a tract of six acres lying contiguous to the city of Dubuque, which was within the amount allowed him as a rural homestead, and which was all subsequently brought within the limits of the city, but was not platted nor laid out by the owner as city property, nor treated otherwise differently than before, it was held that no part of the

[1] Bull v. Conroe, 13 Wis. 233.

[2] Bassett v. Messner, 30 Tex. 604, 611.

[3] To like effect see, also, Arnold v. Adams, 38 Tex. 425; Posey v. Bass, 77 Tex. 512, 14 S. W. Rep. 156; Wilder v. McConnell (Tex. Civ. App.), 43 S. W. Rep. 807; Taylor v. Boulware, 17 Tex. 74.

[4] 47 Ark. 403, 1 S. W. Rep. 700.

[5] Orr v. Doughty, 51 Ark. 527, 11 S. W. Rep. 875. See, to like effect, Fitzgerald v. Rees, 67 Miss. 473, 7 South. Rep. 341. And see Bouchard v. Bourassa, 57 Mich. 8, 23 N. W. Rep. 452.

[6] 39 Minn. 244, 39 N. W. Rep. 321.

homestead tract was lost by such annexation.[7] A like ruling is made in Michigan, where it is held that the owner of a rural homestead, which he uses as a farm, and which is within the limit prescribed by law for a rural homestead, and which is impressed with this character in good faith before the encroachment of the town or city, does not lose his homestead right, in whole or in part, by the annexation of the land to a city or town by operation of law, where he continues to use it as a farm and country homestead generally as before, and does not sanction the annexation.[8] And to like effect is the ruling of the Supreme Court of Nebraska.[9] A different rule seems to be announced in Kansas. In the case of Sarahas v. Fenlon,[10] it was held that when a town or city encroached upon a rural homestead that the rights of the owner thereafter must be governed by the law of an urban homestead, and that he could not thereafter claim an extended area or value of land as a homestead upon the ground that he had acquired his homestead before the limits of the town had encroached upon him. It does not seem very clear from the official report of the case whether the homestead right of the claimant had been acquired before his land was invaded by the encroaching town, or not. But it seems to be inferable that the homestead character of the property had been properly impressed before the extension of the town. Indeed, it is difficult to perceive how the question could legitimately get before the courts were this not the case. For, were the land an urban homestead at the time it was impressed with the character of homestead, there could be but one way to determine the question and there could be nothing to puzzle the courts in determining the extent of the homestead right. The tract of land in dispute consisted of about one hundred and two acres, about seventeen acres of which was added to the town by the extension of the limits. The constitution of Kansas at that time allowed a homestead of one hundred and sixty acres outside of towns and cities, and within towns and cities the limit was one acre. And the land in controversy would all have been exempt had not the seventeen acres been within the limits of the city of Wyandote, as extended. The owner lived on that part without the city, and the court held that he could claim only that part of the one hundred and two acres not in the city as his homestead, and that the remainder was subject to execution and other process. But here was a vested right of homestead acquired, no doubt in good faith. The extension of the town took away that right without the consent, it seems, of the owner of the homestead. And to the extent that a vested right is thus invaded and taken away, it would seem that a ruling upholding the contention that this can be done is in the teeth of the weight of authority and not supported by sound reasoning. If an encroachment of a town upon a part of a rural homestead has the effect of destroying the vested right of homestead in part, such an encroachment upon the whole would entirely shear it of its character of a rural homestead and thereby deprive the owner of all his homestead except the diminished quantity and value allowed by the law governing the limit of homesteads in cities and towns. If a person owning a rural homestead adjoining a municipal government which, by operation of law, and in the manner prescribed, is brought within the limits of the city or town, and which, after such change, is laid off into lots and blocks, is used for urban, instead of rural purposes, as previously, or is otherwise treated and regarded by the owner as city or town property and managed accordingly, he will be deemed to have elected to treat his homestead as urban rather than rural, which will amount, in law, to an implied consent or sanction of the change in the character of the homestead, and his right to claim such exemption will be governed by the law touching homesteads in cities and towns.[11] The reason for this is the homestead, whether it be located within the limits of a town or in the rural districts, is intended for the benefit of the family, and for their use and comfort. The head of the family has the right, ordinarily, to change the homestead at will. He may have either a rural or urban homestead if able to take his choice. That his homestead was

[7] Finley v. Deitrick, 12 Iowa, 516.

[8] Barber v. Rorabeck, 36 Mich. 399.

[9] Gallagher v. Smiley, 28 Neb. 189, 44 N. W. Rep. 187.

[10] 5 Kan. 592. And to like effect see Bull v. Conroe, 13 Wis. 233; Parker v. King, 16 Wis. 223.

[11] Finley v. Deitrick, 12 Iowa, 516; McDaniel v. Mace, 47 Iowa, 509, 511; Waggener v. Haskell (Tex. Civ. App.), 35 S. W. Rep. 711; Clark v. Nolan, 38 Tex. 416.

once rural does not preclude him from electing to have an urban one instead. This may be effected by moving from the rural to an urban homestead. The change is made by the will of the head of the family. It can make no difference, so far as the law is concerned, whether such head of the family prefers to move from a rural to an urban homestead, or, having a rural homestead adjoining a town, conclude to adopt and treat it as urban upon annexation to such town or city. The same object and end is accomplished in both cases. And it is unquestionably within the power and right of the head of the family to make the change. The treating of the rural homestead as a changed property is inconsistent with the intention to regard it as still rural, for it is impossible for a citizen to have both a rural and urban homestead at the same time, especially when both the rural and urban homestead is the very same property. The decisions upon the questions under discussion are not numerous. The courts have admitted the difficulty of disposing of the same satisfactorily. The text-writers have not treated the precise subject very exhaustively, and seem to have found like difficulty. Judge Thompson in his excellent treatise on Homesteads and Exemptions does not make his conclusion very clear.[12] Mr. Waples says: "When a rural homestead becomes urban by the extension of town limits it ought to be measured by the rule applicable to the latter, if it has been laid off as town lots. If, on the contrary, it is brought in by the extension of corporation lines, but is still used for agricultural purposes, and is yet a homestead farm, it would be within the spirit of the constitution and laws treating upon the subject to hold it still a rural homestead, entitled to its original acreage.[13] From the few authorities directly in point it would seem that when a rural homestead is once in good faith acquired, it cannot be changed to the prejudice of the owner without his consent by the encroachment of a town upon the property whereby it becomes a part of the territory of the municipality. That, if the owner acquiesces in the change, the homestead is transformed into an urban residence, and its limits and value must be controlled by the limits of an urban homestead. That the character of the homestead may be changed to urban by the owner by his acts and treatment of his property as an urban homestead rather than a rural one. That he cannot have a homestead of both characters at the same time.

W. C. RODGERS.

Nashville, Ark.

[12] Thompson, Homesteads and Exemptions, § 13 *et seq.*

[13] Waples, Homesteads and Exemptions, p. 224.

NEGLIGENCE—FAILURE TO GUARD POND.

STENDAL v. BOYD.

Supreme Court of Minnesota, June 15, 1898.

A landowner is not bound to fence or otherwise guard an open excavation or pond, natural or artificial, on his land, so as to prevent injury to children coming thereon, without right or invitation, express or implied, although they are induced so to do by the alluring attractiveness of such excavation or pond.

START, C. J.: Action to recover damages for the death of plaintiff's intestate, whose death it is alleged was caused by the negligence of the defendant. Verdict for the plaintiff for $400, and the defendant appealed from an order denying his alternative motion for judgment in his favor, notwithstanding the verdict or for a new trial. There is but little conflict in the evidence, and the facts (stating them as strongly for the plaintiff as the evidence will warrant) are substantially the following: The defendant since 1891 has been the owner of an uninclosed lot in the city of St. Paul, fronting 40 feet on Canton street, and extending back 136 feet, situated in a populous part of the city, there being 25 families living within 250 feet of it at the time of the accident here in question. On each side of this lot there was a vacant lot. In the years 1891 and 1892, the defendant, in quarrying stone from his lot, excavated thereon a hole with perpendicular sides 6 or 7 feet high, which came up to and under the sidewalk, and extended back some 70 feet. It was about 28 feet wide at the sidewalk, and 40 feet wide at a point 30 feet back from the street. This left a triangular track on the north side of the excavation. So much of the excavation as was in the street was covered by the sidewalk, and was originally protected at the street line by a fence which had been broken down at the time of the accident. The excavation filled with water from natural causes, forming a pond attractive and dangerous to children who are accustomed to go there to play. It had never been protected by a fence or otherwise, except on the street line. The defendant was notified that it was a dangerous place, and had been, previous to the accident, informed that a child had fallen into the pond. On May 3, 1895, the plaintiff's intestate and son, 4 years and 10 months old, while playing with other children on the triangular piece referred to, and at a point 12 to 15 feet back from the street, fell into the pond, and was drowned. There is no evidence

that the defendant invited or knowingly permitted the children to come upon his lot to play, or otherwise, except as may be implied from his knowledge that his lot, with the pond thereon, was an attractive and dangerous place for children. The condition of the fence along the sidewalk in front of the water on the street line is immaterial, in view of the fact that the child did not fall into the water from the sidewalk where he would have had a right to be. The absence of this fence was not the cause of the child's death, proximate or otherwise, as the child was playing on the triangular track north of the pond, which was unfenced and unprotected when he fell into the water.

The rule that if a landowner makes a dangerous excavation on his land adjoining a street or highway, into which a person rightfully in the street falls, the owner is liable, has no application to this case. It is sought, however, to hold the defendant liable upon the facts stated, upon the principle of the "Turntable Cases." Keffe v. Railway Co., 21 Minn. 207; O'Malley v. Railway Co., 43 Minn. 289, 45 N. W. Rep. 440. The liability of a landowner to children who are induced to come upon his premises by reason of attractive and dangerous machinery thereon was carefully limited in the original decision, and the limitations have been enforced by the subsequent decisions of this court. In the case of Twist v. Railroad Co., 39 Minn. 164, 39 N. W. Rep. 402, the opinion was expressed that the doctrine of the Turntable Cases ought not to be extended. See, also, Haesley v. Railroad Co., 46 Minn. 233, 48 N. W. Rep. 1023; Ratte v. Dawson, 50 Minn. 450, 52 N. W. Rep. 965; and the opinion on the former appeal in this case, 67 Minn. 279, 69 N. W. Rep. 899. The doctrine of the "Turntable Cases" is an exception to the rule of non-liability of a landowner for accidents to trespassers on his premises from visible causes. If the exception is to be extended to this case, then the rule of non-liability as to trespassers must be abrogated as to children, and every owner of property must at his peril make his premises child-proof. If the owner must guard an artificial pond on his premises, so as to prevent injury to children who may be attracted to it, he must, on the same principle, guard a natural pond; and, if the latter, why not a brook or creek, for all water is equally alluring to children? If he must fence in his stone quarry after it fills with water, so that children cannot reach it,—a well-nigh impossible task,—why should he not be required to do it before, for a stone quarry, with its steep and irregular sides, might well be an attractive and dangerous place to children? It would seem that there was no middle ground, and that the doctrine of the Turntable Cases ought to be limited to cases of attractive and dangerous machinery. But it is not necessary to a decision of this particular case to adopt any absolute limitation of the doctrine. A turntable case and the case at bar may be distinguished in many respects. In the case of Peters v. Bowman, 115 Cal. 345, 47 Pac. Rep. 113, 598, which was one where a boy had been drowned in an unguarded pond on private property, the court, in holding the owner not liable, stated the distinction in these words: "A turntable is not only a danger specially created by the act of the owner, but it is a danger of a different kind to those which exist in the order of nature. A pond, though artificially created, is in no wise different from those natural ponds and streams which exist everywhere, and which involve the same dangers and present the same appearance and the same attractions to children. A turntable can be rendered absolutely safe, without destroying or materially impairing its usefulness, by simply locking it. A pond cannot be rendered inaccessible to boys by any ordinary means. Certainly, no ordinary fence around the lot upon which a pond is situated would answer the purpose, and therefore, to make it safe, it must either be filled or drained, or, in other words, destroyed." We are of the opinion that the doctrine of the Turntable Cases ought not to be applied to this case.

So far as we are advised, there is but one adjudged case in which the doctrine has been extended to a pond on private premises. The exception is the case of City of Pekin v. McMahon, 154 Ill. 141, 39 N. E. Rep. 484, which fully sustains the contention of the plaintiff in the case at bar. The case of Penso v. McCormick, 125 Ind. 116, 25 N. E. Rep. 156, also relied upon by the plaintiff's counsel, is not in point. That was a case where the landowner, after piling up a mound of ashes on his uninclosed lot, allowed it for months to be used as a thoroughfare, and as a playground for children, and then removed some of the ashes, and replaced them with burning embers, which cooled on top, so as to look like the rest of the mound, but remained hot below; and he was held liable for the injury received by a child by stepping into the hot coals while passing across the lot. The ground of his liability was that he had permitted his lot to be used as a thoroughfare and a playground, and then created thereon a hidden peril or trap. With the exception of the case of City of Pekin v. McMahon, the courts of last resort, including those which recognize the doctrine of the Turntable Cases, have uniformly denied the liability of a landowner for injuries to trespassing children by reason of open and unguarded ponds and excavations upon his premises. Overholt v. Vieths, 93 Mo. 422, 6 S. W. Rep. 74; Richards v. Connell, 45 Neb. 467, 63 N. W. Rep. 915; City of Omaha v. Bowman (Neb.), 72 N. W. Rep. 316; Peters v. Bowman, 115 Cal. 345, 47 Pac. Rep. 113, 598; Klix v. Nieman, 68 Wis. 271, 32 N. W. Rep. 223; Hargreaves v. Deacon, 25 Mich. 1; Gillespie v. McGowan, 100 Pa. St. 144. The plaintiff seeks to distinguish these cases from the one at bar on the ground that the children for whose death or injury a recovery was sought were much older than the plaintiff's intestate in this case. A recovery in the cases re-

ferred to was not denied on the ground of the capacity and contributory negligence of the children, but upon the broad ground that the landowner was not bound to make his premises safe for trespassing children. Upon the undisputed facts in this case, we hold that the plaintiff cannot recover, for the reason and upon the ground that a landowner is not bound to fence or otherwise guard an open excavation or pond, natural or artificial, on his land, so as to prevent injury to children coming thereon without right or invitation, express or implied, although they are induced so to do by the alluring attractiveness of such excavation or pond. Order reversed and case remanded, with direction to the district court to grant the defendant's motion for judgment notwithstanding the verdict.

NOTE.—*Some Recent Cases on Liability for Negligence of Owner of Dangerous Premises Attractive to Children.*—Where a railroad company had its stock yards, situated on the outskirts of a town, fully inclosed, and had secure gates through which to enter, but on the inside there was a gate in a dangerous condition, such company would not be liable for the death of a child caused by the falling of such defective inside gate while the child was swinging on it, though the company knew that children played in the vicinity of the yards, without the knowledge of the company, by climbing over an outside gate. Chicago, K. & W. R. Co. v. Bockoven (Kan.), 36 Pac. Rep. 322. In an action against a railroad company for injury to plaintiff's son, eight years old, it appeared that defendant was loading cars from its stock pens; that a lane extended from the pens to the car doors; that it was inclosed by a fence; that, while a car was being moved along, the gang plank, which had not been drawn back far enough, injured the foot of the boy, who had got into the lane, and was standing near the plank. Held, that the instruction to find for plaintiff if the injury was due to "negligence of defendant, in not having its premises inclosed or guarded," was error, since the rule requiring owners to guard dangerous machinery to prevent injury to trespassing children does not apply to stock pens. Gulf, C. & S. F. Ry. Co. v. Cunningham (Tex. Civ. App.), 26 S. W. Rep. 474. Leaving unguarded a burning slack pit of a coal mine, close to a narrow path leading to the mine, near which children are in the habit of playing, the fire being concealed by ashes, is negligence, which renders the company operating the mine liable for injuries caused to a child by falling into the pit, without knowledge of the danger or negligence on his part. Union Pac. Ry. Co. v. McDonald, 152 U. S. 262, 14 S. C. Rep. 619. The owner of a vacant, unfenced lot, on which children were accustomed to play, is not liable for the death of a child six years old, who was drowned in a cesspool on the lot. Greene v. Linton, 27 N. Y. S. 891, 7 Misc. Rep. 272. Where a railroad company maintains a turntable at a place accessible to children, and does not lock or fasten it in any manner, the company is liable for injuries to children who are attracted to the premises to play with the turntable. Walsh v. Fitchburg R. Co. (Sup.), 28 N. Y. S. 1097, 78 Hun, 1. The owner of a vacant, unfenced lot, on which there was a pond of water, was not liable for the death of a boy accustomed to play by the pond, who fell from a raft constructed by himself and was drowned. Richards v. Connell (Neb.), 63 N. W. Rep. 915. In an action for injuries to plaintiff, a child six years old, it was shown that he went on defendant's premises on Sunday, with the watchman and his son, against the protest of the watchman, and fell into a pit about 300 feet from the nearest street, and about 150 feet from a pile of sawdust where children sometimes played on Sunday. The pit was full of hot water run off from defendant's boiler, and partially covered with bark, but the water could be seen. Held, that the jury should be instructed to consider whether the pool was attractive to children, and whether this ought to have been known to defendant, and whether defendant, as a reasonably prudent person, ought to have anticipated that children of the age of plaintiff would probably receive such an injury, by reason of the situation and condition of the pool at the time. Brinkley Car Works & Mfg. Co. v. Cooper (Ark.), 60 Ark. 545, 31 S. W. Rep. 154. An owner who digs a deep hole on his unfenced land about 25 feet from a street, which fills with water, and is concealed by boards and shavings floating on the surface, is not liable in damages for the death of a child five years old, who, without the consent of the owner, goes on the land and is drowned in the hole. Grindley v. McKechnie (Mass.), 40 N. E. Rep. 764. In an action for personal injuries, it appeared that in the yard of a tenement house, in which apartments were rented from defendants by plaintiff's father, a large flat stone stood almost perpendicularly against the fence, and had so stood for several months, and at the time the apartments were let; that, at the time of the leasing, defendants' agent had remarked that it was "a nice yard for children to play in;" and that while plaintiff, a child 10 years old, was drumming on the stone, it fell and injured her. Held, that defendants were liable, though they had no actual knowledge of the existence of the stone, or its dangerous nature. Schmidt v. Cook (Com. Pl. N. Y.), 33 N. Y. 624, 12 Misc. Rep. 449. Plaintiffs' son, seven years old, went up to one of the cellar windows of a building in process of construction in a large city, which was about three feet from the street line, and tried to draw himself up by taking hold of a stone placed across the top of the window frame. The stone, not being fastened, fell and killed him. It was not shown that the owner of the building and the contractors knew of the dangerous position of the stone, or that children were in the habit of playing around the building. Held, that plaintiffs cannot recover, deceased having been a trespasser. Witte v. Stifel (Mo. Sup.), 28 S. W. Rep. 891. A railroad company which maintains on its land a properly constructed turntable is not liable for injuries to a boy caught in the table while he was playing about it with other boys, on the ground that as to children it was dangerous, and should either have been guarded to prevent their approach, or some device should have been used to prevent its turning while not in use. Walsh v. Fitchburg R. Co., 145 N. Y. 301, 39 N. E. Rep. 1068. Where land in a thickly settled city is separated from adjoining streets only by fences which have large gaps in them, and has upon it a pit of deep water, on which are floating planks, and the owner is aware that the place is attractive to children of tender years, his failure to use reasonable care to drain such pit, constitutes negligence as against children of tender years, even though they are technically trespassers. City of Pekin v. McMahon (Ill. Sup.), 154 Ill. 141, 39 N. E. Rep. 484. A city property owner, on whose lot surface water had collected so as to form a pond in an excavation, is not liable, by reason of his failure to protect the pond by fences, for the death of a child while bathing in the pond without permission or invitation from the lot owner. Moran v. Pullman Palace

Car Co. (Mo. Sup.), 36 S. W. Rep. 659. Defendant railroad company owned a yard fenced on three sides and open on the side next its track, in which it stored material used in the construction and repair of its road. Children sometimes entered the yard to play, but were uniformly ordered out by defendant's servants when seen. Plaintiff, a little girl eight years old, was playing in the yard, and was sent home by defendant's watchman, but returned as soon as he was gone, and while attempting to climb upon some ties, which were insecurely piled, one fell and injured her. Held, that defendant was not liable for the injury. Missouri, K. & T. Ry. Co. of Texas v. Edwards (Tex. Sup.), 36 S. W. Rep. 430. An owner of land who knows or might reasonably have expected that children would play thereon will not be liable for injury to a trespassing child from the falling of a pile of lumber if in piling it he has used the care which a reasonably prudent person under like circumstances would have used, though the construction of the pile might in fact be dangerous to children climbing thereon. Missouri, K. & T. Ry. Co. of Texas v. Edwards (Tex. Civ. App.), 32 S. W. Rep. 815. One who allows surface water to accumulate in a pond on his land, without fencing or inclosing it, is not liable for the death of a trespassing infant drowned therein. Peters v. Bowman, 115 Cal. 345, 47 Pac. Rep. 113. Where the owner of land in a city failed to guard a dangerous excavation on the land, as required by ordinance, he was not liable for injuries to a boy who was *sui juris*, and who voluntarily went into the excavation to get a piece of wire, and burned his feet in a smouldering fire therein. Butz v. Cavanaugh (Mo. Sup.), 38 S. W. Rep. 1104. A railroad company dug a trench on its right of way, and by reason of its diverting surface water, a pool of water was created in the trench, which was dangerous to no one but children of tender years. A child less than three years old escaped from the custody of its parents, and fell into the pond and was drowned. The parents were not guilty of any negligence in the care of their child. Held, that they could not recover of the railroad company for loss of services. Missouri, K. & T. Ry. Co. of Texas v. Dobbins (Tex. Civ. App.), 40 S. W. Rep. 861. Defendant operated cotton seed oil works within 150 yards of a city school. There were openings in the building used for driving in wagons loaded with seed, and, among other machinery, were conveyors, consisting of long troughs without covers, in which were revolving shafts with metal flanges set in the shafts spirally. Plaintiff, a child seven years old, had been forbidden to enter the building, and warned of the danger of going about the machinery, and notices to keep out were posted at such openings, but she entered the building at one of such openings, and in attempting to jump over one of the conveyors was injured. She was seen by an employee from three to five minutes before the accident, when she was 20 feet from the conveyor, apparently going to an exit, and he did not interfere with her. Held, in an action for the injuries, that it was not error or misleading to charge that it was defendant's duty, in the "location, construction and operation" of its machinery, to exercise such care to prevent injury therefrom as an ordinarily prudent man would exercise; and in determining such negligence the jury should consider how defendant's seed house and machinery were "located, constructed and operated," what precautions were used to prevent persons going about or coming in contact with said machinery, and the duty of employees in charge of it. Dublin Cotton Oil Co. v. Jarrard (Tex. Civ. App.), 40 S. W. Rep. 531. Defendant could not complain of a charge that, if the child went in "with the knowledge and by permission of the defendant's employees," and they knew her tender age, and the danger to which she was exposed, and failed to warn her thereof, and knowingly "permitted her to go about said machinery," and in attempting to cross said conveyor she was injured, she was entitled to recover; since the condition of recovery imposed on plaintiff was more onerous than the law required. Dublin Cotton Oil Co. v. Jarrard (Tex. Civ. App.), 40 S. W. Rep. 531. In a case of injury to an infant trespasser by machinery in an open building, the law applicable to adult trespassers does not apply. Dublin Cotton Oil Co. v. Jarrard (Tex. Civ. App.), 40 S. W. Rep. 531. The common law does not impose upon the owner of property the duty to use care to keep his premises in such condition that a child of tender years going thereon without invitation may not be injured. Dobbins v. Missouri, K. & T. Ry. Co. of Texas (Sup.), 41 S. W. Rep. 62.

BOOK REVIEWS.

GENERAL DIGEST, VOL. 4.

This volume covers all the reported decisions of all the courts in the United States, of the higher courts of England, with many important cases from other Canadian courts, including all officially reported cases between July 1, 1897, and January 1, 1898. As in the three preceding volumes of this series, the manner of its preparation is in every respect first-class, and nothing seems to have been omitted that is calculated to give the practitioner a ready and accurate reference to current cases. A new feature of this volume is the device by which the authorities of any particular State or jurisdiction on any question can be separately examined as rapidly as if it were a separate digest of that State or jurisdiction only. A heavy faced abbreviation in brackets marks the State or jurisdiction at the head of each paragraph, so that all the decisions from a particular court that may appear on any page can be seen at a glance. The volume has over seventeen hundred pages, and is satisfactory in point of printing and mechanical execution. Published by The Lawyers' Co-Operative Publishing Co., Rochester, N. Y.

MISSOURI STATUTE ANNOTATIONS.

This book, containing about four hundred pages, will be found of great value to Missouri practitioners. It contains the citations in all the State and federal reports of the revised statutes and subsequent laws, and references to all enactments of, and changes in, the sections of the revised statutes from 1804 to 1897, inclusive. It is intended for use with the revised statutes of 1889 and 1899. Each section of the statute is in bold black type, and in connection with it are the citations of all decided cases, wherein that section is applied, construed or referred to. The sections are arranged in commercial order from the beginning of the book to the end. It has been prepared by Samuel J. McCulloch of the Kansas City bar. He is also designated as the publisher. The St. Louis agent for its sale is W. J. Kesl.

AMERICAN DIGEST, CENTURY EDITION, VOL. 2.

At the time of the appearance of the first volume of this valuable series of digests we took occasion to commend it in favorable terms to the profession. An examination of the second volume before us amply justifies such commendation. This volume embraces

a complete digest of all reported American cases from the earliest time to 1896, on Affidavit to Appeal and Error. Here will be found a complete resume of all the cases on the important topics "Alteration of Instruments," "Animals," "Appeal and Error," the latter subject taking up nearly three-fourths of this very large volume. In the preparation of the digests and the manner of their arrangement under heads and subheads, nothing but praise can be said. We know of nothing in the line of legal literature which has greater practical value to the busy lawyer than this exhaustive compendium of American law so arranged that even "he who runs may read." Published by West Publishing Co., St. Paul.

FEDERAL PRACTICE.

This is a treatise on the Constitution and Jurisdiction of the United States Courts, on pleading, practice, and procedure therein, and on the powers and duties of United States commissioners with rules of court and forms. It is in two handsomely printed volumes. To the practitioner in federal courts it would seem to be of great value. It is well written and bears evidence of care and accuracy on the part of its authors, Hon. A. H. Garland and Robert Ralston, Esq. Published by T. & J. W. Johnson & Co., Philadelphia.

JONES ON EASEMENTS.

We know of no law writer who is better qualified for the preparation of a work on the subject of easements than Mr. Leonard A. Jones, the author of this treatise. In addition to his natural qualifications he has an advantage derived from an exhaustive study and research for a long period of years in the domain of real estate law, being the author of many valuable works on the various branches pertaining to that important subject. In this volume, as he says in his preface, he takes up the consideration of those incorporeal hereditaments which are called easements or uses and profits in the land of another. The book is in reality a continuation of the author's treatise on the Law of Real Property. The text and notes of the work exhibit the same commendable diligence and care which characterize and have given a high reputation to the author's previous treatises. The book is a large volume of nearly eight hundred pages. Published by Baker, Voorhis & Co., New York.

BOOKS RECEIVED.

War Revenue Law of 1898, with Index. Washington Law Book Co., Washington, D. C.

United States Bankruptcy Law of 1898. Uniform System, with Marginal Notes and Index. Published by Washington Law Book Co. Washington: Government Printing Office, 1898.

Atlas of Legal Medicine. By Dr. E. Von Hofmann, Professor of Legal Medicine and Director of the Medico Legal Institute at Vienna. Authorized Translation from the German. Edited by Frederick Peterson. M. D., Assisted by Aloysius O. J. Kelly, M. D. Philadelphia: W. B. Saunders, 925 Walnut Street. 1898.

HUMORS OF THE LAW.

Some years ago, many farmers along the line of the Missouri, Kansas and Texas Railway brought suit against it, and engaged a young lawyer named Brown. Judge Gantt, who was presiding, was compelled to throw many of the cases out of court because they were so improperly brought. Brown was mad all over. Swelling with indignation, he arose and said: "Your Honor, will you please tell me how it is possible in this court to get justice against a railroad company?" Judge Gantt quietly ignored the contempt of court shown by the lawyer and asked: "Do you wish an answer to that question, Mr. Brown?" "Yes, sir," defiantly replied the indignant lawyer; "yes, sir, and I want to know how a farmer can get his case into this court so that it will be heard." Judge Gantt smiled and said: "Well, first, Mr. Brown, I'd advise the farmer to hire a lawyer." Brown wilted.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

ARIZONA.....4, 8, 104
ARKANSAS.....1, 10
CALIFORNIA.....81, 103
GEORGIA..... 6, 33, 109
ILLINOIS.....11, 34, 102, 116, 117
INDIANA.....88, 84, 90
IOWA.....118
KANSAS.....9, 24, 54, 60, 64, 67, 71, 77, 85, 111, 119, 126
KENTUCKY.....12, 20, 26, 91, 96, 124
MICHIGAN.....16, 46, 74
MINNESOTA.....3, 47, 73, 113, 123
MISSOURI.....19, 61, 65
MONTANA.....68
NEBRASKA.....14, 15, 29, 38, 56, 62, 72, 95, 108, 112, 120
NORTH CAROLINA.....55, 92, 97, 101, 127
OHIO.....82, 94
OREGON.....48
TENNESSEE.....49, 70, 78, 80, 88, 122
TEXAS.....17, 18, 21, 30, 32, 36, 39, 40, 41, 76, 107, 110, 125
UNITED STATES C. C.....7, 31, 48, 53
UNITED STATES C. C. OF APP., 13, 22, 23, 28, 51, 52, 100, 106
UNITED STATES S. C.....35, 99
WASHINGTON.....25, 44, 87
WEST VIRGINIA.....5, 37, 45, 50, 58, 66, 68, 69, 75, 89, 98, 105
WISCONSIN.....2, 27, 42, 57, 59, 79, 86, 93, 114, 115, 121

1. ACCIDENT INSURANCE—Intentional Killing.—In an action on an accident policy which provided that insurer's liability should not cover death resulting from injuries intentionally inflicted on insured by others, where it was shown insured had been found dead, with gun shot wounds on his body, near the residence of S, and that S was seen near by, defendant may show that insured and S had previously had a quarrel over a business transaction.—MASONS' FRATERNAL ACC. ASSN. v. RILEY, Ark., 45 S. W. Rep. 684.

2. ACCIDENT INSURANCE—Notice of Injury—Pleading.—The requirement of an accident policy that immediate notice shall be given of "any accident and injury for which a claim is to be made," must be complied

with even when death results, and a notice from a beneficiary 29 days after she learned of the accident causing the insured's death was insufficient.—FOSTER v. FIDELITY & CASUALTY CO. OF NEW YORK, Wis., 75 N. W. Rep. 69.

3. ACCOUNT STATED.—Where a party indebted on an account receives a statement thereof, and retains it beyond such time as is reasonable under the circumstances, without objection, he is considered to have acquiesced in its correctness.—I. L. ELWOOD MFG. CO. v. BETCHER, Minn., 75 N. W. Rep. 113.

4. ACTION—Parties — Real Party in Interest.—Under Rev. St. par. 680, providing that every action shall be prosecuted in the name of the real party in interest, a county interested in the payment thereof may sue on a bond to secure payment of taxes, notwithstanding the bond is made to the territory.—CURRY v. GILA COUNTY, Ariz., 53 Pac. Rep. 4.

5. ADMINISTRATION—Dower—Sale in Lieu.—A widow, merely on her right to dower, cannot file a bill to sell the heir's fee-simple, and get money from its sale in lieu of dower, in kind. A decree of sale in such case is void,—confers no title,—and is not merely erroneous.—HOBACK v. MILLER, W. Va., 29 S. E. Rep. 1014.

6. ADMINISTRATION—Sales by Administrator.—An administrator in making a sale may exercise a discretion as to demanding cash or extending credit; but, if he gives credit, he must take security, ample at the time, or else be personally responsible for the amount at which the property is sold.—ENGLISH v. HORNE, Ga., 29 S. E. Rep. 972.

7. APPEAL — Effect of Decision.—Where the supreme court has considered a case at length on its merits, and remanded it to the circuit for further proceedings not inconsistent with its opinion, the circuit court will not permit the defendant to amend his answer so as to deny a fact affirmatively placed upon and determined by the supreme court.—WALKER v. BROWN, U. S. C. C., S. D. (Iowa), 86 Fed. Rep. 364.

8. APPEAL — Second Appeal.—The judgment of an appellate court in a case becomes the law of that particular case, and is not subject to review on a second appeal.—SNYDER v. PIMA COUNTY, Ariz., 53 Pac. Rep. 6.

9. APPEAL — Supersedeas Bond.—A misrecital of the date of the rendition of a judgment, made in a *supersedeas* bond given to stay execution of the judgment, will not defeat an action upon the bond, when the identity of the judgment rendered as the one intended to be stayed is clearly shown by other recitals in the bond, and by extrinsic evidence.—HANDY v. BURRTON LAND & TOWN CO., Kan., 53 Pac. Rep. 67.

10. ASSIGNMENT FOR BENEFIT OF CREDITORS—Fraud.—Where one who is insolvent makes a deed of assignment of all his goods for the benefit of his creditors, but, immediately before and after executing such deed, fraudulently carries away a portion of his goods, the deed is fraudulent.—BALL-WARREN COM. CO. v. WILLS, Ark., 45 S. W. Rep. 687.

11. ATTACHMENT — Appearance.—A non-resident attachment debtor may appear specially to question the jurisdiction over the *res*, on the ground of invalidity of the service of the writ, without thereby appearing generally.—PACK, WOODS & CO. v. AMER. TRUST & SAV. BANK, Ill., 50 N. E. Rep. 326.

12. ATTORNEY AND CLIENT — Lien for Services.—Ky. St. § 107, giving attorneys a lien on claims in their hands, does not extend to demands on behalf of the State, in view of section 4686, ppoviding that all public moneys and dues to the commonwealth shall be paid into the State treasury; and hence an attorney who has recovered moneys for the State has no authority to receive and retain same to enforce payment for his services.—HENDRICK v. POSEY, Ky., 45 S. W. Rep. 525.

13. BAILMENT—Contract for Control of Farm.—The owner of a farm, on which he then lived and has since lived, agreed with his son that the son should take control and management of the farm, implements, and stock, make repairs, pay taxes, replace stock, and have the net proceeds, each party being free to terminate the agreement at any time. This arrangement continued, with an interval of a few months, for six years. Held, that the transaction was a bailment, which did not vest the title of any of the property, or of the proceeds of the farm, in the son, so as to subject it to an execution for his debts.—HATCH v. HEIM, U. S. C. C. of App., Seventh Circuit, 86 Fed. Rep. 436.

14. BANKS — Liability of Stockholders.—The requirements of Const. art. 11, § 4, under the title "Miscellaneous Corporations," that, before enforcement of individual liability of stockholders, there must be judicially ascertained the indebtedness proposed to be enforced, and that the assets of the corporation be first exhausted, held applicable to the stockholders' liability in banking corporations, as described in section 7 of the same article.—HASTINGS v. BARND, Neb., 75 N. W. Rep. 49.

15. BILLS AND NOTES—Extension.—The payee of a negotiable promissory note, who has sold and transferred the same, cannot make a valid contract extending the time of payment of such note.—ZOBEL v. BAUERSACHS, Neb., 75 N. W. Rep. 43.

16. BILLS AND NOTES — Extension of Notes.—The acceptance of interest beyond the date of maturity of a note does not constitute an extension of the time of payment.—MORSE v. BLANCHARD, Mich., 75 N. W. Rep. 93.

17. BILLS AND NOTES—Fraud.—It is a good defense to an action on a note that its execution was procured by false representations of the payee to the maker, who was unable to read, and that a renewal, without which the note would be barred by limitations, was procured by the payee's son telling the maker, after his refusal to sign it, that his signing it would release him from all trouble arising from the former note, but refusing to read or permit the renewal to be read to him.—WOOTTERS v. HADEN, Tex., 45 S. W. Rep. 755.

18. BILLS AND NOTES—Liability of Sureties.—Where a surety signed a note with the understanding that another was to sign, which was known to the payee's agent when the note was delivered to him, and the other did not sign, the first was not liable.—CARLETON v. COWART, Tex., 45 S. W. Rep. 749.

19. BILLS AND NOTES — Limitation of Actions.—Rev. St. 1889, §§ 6793, 6794, 6795, provide that, in actions on contract, no promise is evidence of a new or continuing contract unless in writing subscribed by the party to be charged, and, if there be two or more contractors, no one of them will be charged on such new promise subscribed by the others, but that these provisions shall not lessen the effect of the payment of interest or principal by any person. Held, that a payment by the maker of a note will not arrest the statute as to an indorser, since the latter's obligation is separate and distinct from that of the maker.—MADDOX v. DUNCAN, Mo., 45 S. W. Rep. 688.

20. BILLS AND NOTES — Principal and Agent—Consideration.—Where a bill of exchange is drawn by an agent in his own name on the principal, the indebtedness of the principal to the payee constitutes a sufficient consideration to bind the agent.—CITIZENS' BANK v. MILLET, Ky., 44 S. W. Rep. 366.

21. BILLS AND NOTES—Protest of Note.—Where a note is made payable at a city without naming any particular place, and the maker does not reside or have a place of business there when the note matures, possession thereof on the day in that city by a notary who is authorized by the holder to demand and receive payment of the maker is a sufficient demand on the maker, authorizing protest if he fails to appear; but his possession of the note for the sole purpose of demanding payment from the payee and indorser, and fixing his liability as indorser by protest, is not enough.—WILLIAMS v. PLANTERS' & MECHANICS' NAT. BANK OF HOUSTON, Tex., 45 S. W. Rep. 690.

22. CARRIERS OF GOODS—Connecting Lines.—A common carrier engaged in interstate commerce may at

common law and under the interstate commerce law, demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another connecting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier.—GULF, C. & S. F. RY. CO. v. MIAMI S. S. CO., U. S. C. C. of App., Fifth Circuit, 86 Fed. Rep. 407.

23. CARRIERS OF PASSENGERS—Negligence.—Where the trains of one company, in charge of its own employees, run over the track of another company, under contract that they shall obey the orders of the train dispatcher of the latter company, such contract does not release the company so using the track from liability for injuries caused by the negligence of its employees.—CLARK v. GEER, U. S. C. C. of App., Eighth Circuit, 86 Fed. Rep. 447.

24. CONSTITUTIONAL LAW—Criminal Law—Sentence to Reformatory.—A commitment to the State reformatory does not deprive a person of civil rights, or involve infamy to his person, as does a sentence to the penitentiary; and a person committed to the reformatory cannot be transferred to the penitentiary by the board of managers on the ground of discipline, as a sentence to the penitentiary can only be imposed by a court of record.—IN RE DUMFORD, Kan., 53 Pac. Rep. 92.

25. CONSTITUTIONAL LAW—Statutes of Limitation—Judgment.—Act March 6, 1897, which takes away the right of perpetuating judgments beyond a specified time, is not properly a statute of limitations, and is unconstitutional, as impairing the obligation of contracts, in so far as it relates to contracts in or out of judgment at the time it was enacted.—BETTMAN v. COWLEY, Wash., 53 Pac. Rep. 53.

26. CONTRACTS.—Where plaintiff agreed to advance money to make a test as to whether the manufacture of a certain article could be made a success, and to take stock in a corporation formed to manufacture the commodity, defendant agreeing to indemnify him against loss if the business should prove unprofitable after a fair trial, a fair test having shown the business to be unprofitable, plaintiff may recover as a part of his loss the amount paid by him for stock of the corporation.—COLSTON v. CHENAULT, Ky., 45 S. W. Rep. 664.

27. CONTRACTS—Indians—Jurisdiction of State Courts.—In the absence of a federal statute or treaty to the contrary, a State court has jurisdiction of an action on contract by a white man against an Indian belonging to a tribe and a particular reservation.—STACY v. LA BELLE, Wis., 75 N. W. Rep. 60.

28. CONTRACTS IN RESTRAINT OF TRADE.—A contract with an independent manufacturer for the entire product of his plant is not in itself a contract in illegal restraint of trade.—CARTER-CRUME CO. v. PEURRUNG, U. S. C. C. of App., Sixth Circuit, 86 Fed. Rep. 439.

29. CONTRACT OF MARRIED WOMAN—Enforcement.—In an action on the contract of a married woman, when the coverture is established, the burden is on the asserting party to show the liability of the wife, that the contract was with reference to or with intent to bind her separate property.—FIRST NAT. BANK OF SUTTON v. GROSSHANS, Neb., 75 N. W. Rep. 51.

30. CORPORATIONS—Receiver — Appointment—Stockholder.—Unless a power is conferred by statute, equity has no power to wind up the affairs of a corporation by the appointment of a receiver at the suit of a stockholder failing to show a cause of action against the corporation which would entitle him to the appointment, as an ancillary remedy, independently of any right he may have thereto as a stockholder.—PEOPLE'S INV. CO. v. CRAWFORD, Tex., 45 S. W. Rep. 738.

31. CORPORATIONS—Statute Adopting Foreign Corporation.—Act March 9, 1896 (22 St. at Large S. C. p. 114), prescribes the necessary steps to authorize a foreign corporation to transact business in the State, and provides that any foreign corporation complying with such requirements shall become a domestic corporation, enjoy the rights and be subject to the liabilities such domestic corporation, may sue and be sued in the State courts, and shall be subject to the jurisdiction of the State as fully as though originally created under the laws of South Carolina. Held, that a foreign corporation does not, by complying with such statute, become a citizen of South Carolina, so as to effect the jurisdiction of the United States courts over it.—HOLLINGSWORTH v. SOUTHERN RY. CO., U. S. C. C., D. (S. Car.), 86 Fed. Rep. 353.

32. CRIMINAL EVIDENCE—Confession.—One accused of theft, who remained silent when another stated in his presence that he bought the stolen property from him, was not bound thereby; and the statement was not admissible against him, unless there was a system of theft carried on, in which both the accused and the one making the statement were engaged.—GUINN v. STATE, Tex., 45 S. W. Rep. 694.

33. CRIMINAL EVIDENCE—Fornication — Conduct of Parties.—When, on a trial for fornication, there was evidence for the State tending to show that the accused and the other alleged guilty party were, on a designated occasion, in a position strongly indicating that the act charged in the indictment was being committed, it was competent for the State to supplement this evidence by proving lascivious conduct between these parties on a previous occasion, such proof being relevant as throwing light upon their relations toward each other, and as tending to illustrate the real nature of their conduct upon the occasion first above mentioned.—BASS v. STATE, Ga., 29 S. E. Rep. 966.

34. CRIMINAL LAW—Gaming.—Under Laws 1895, p. 156, prohibiting the keeping of clock, tape or slot machines, and providing for their seizure and destruction, the mere keeping of such machines is an offense without proof of actual use for gambling purposes.—BOBBL v. PEOPLE, Ill., 50 N. E. Rep. 822.

35. CRIMINAL LAW — Homicide—Indictment—Murder on the High Seas.—An indictment for murder on the high seas need not specify the locality where the alleged offense was committed. General averments that it was on an American vessel on the high seas, within the jurisdiction of the court and of the United States, and out of the jurisdiction of any particular State, are sufficient.—ANDERSEN v. UNITED STATES, U. S. S. C., 18 S. C. Rep. 689.

36. CRIMINAL LAW—Homicide—Self-defense.—An instruction that if deceased was armed at the time he was killed, and "was making an attack," etc., was not erroneous as justifying a killing in self-defense only after actual attack, where the right was subsequently enlarged by the words, "if deceased had made an attack or was about to make an attack."—NAIRN v. STATE, Tex., 45 S. W. Rep. 703.

37. CRIMINAL LAW—Letting House for Purpose of Illfame.—Where a party is indicted for knowingly leasing or letting to another any house or other building for the purpose of being used or kept as a house of illfame, and the defendant claims to have sold the property, and offers in evidence to the jury the written contract by which said sale is claimed to have been made, and asks the court to instruct the jury as to its meaning, character and legal effect, as, for example, whether it is a lease or a contract of sale, it is the duty of the court to construe such contract, and instruct the jury as to its character.—STATE v. EMBLEM, W. Va., 29 S. E. Rep. 1031.

38. CRIMINAL LAW—Limitations.—Section 256, of the Criminal Code, construed and held that the filing of a complaint before an examining magistrate, charging a person with the commission of a crime, causing him to be arrested, examined and bound over to the district court, does not arrest the running of the statute of limitations, unless the magistrate before whom the complaint was filed had jurisdiction to try and punish the accused for the offense with which he was charged.—STATE v. ROBERTSON, Neb., 75 N. W. Rep. 37.

39. CRIMINAL LAW—Theft—Instructions.—Where, on a trial for theft of the ox of P, the State relied on defendant's recent possession of the stolen property, and defendant gave evidence that, at the time he was arrested with it, he stated it belonged to E, and also introduced evidence that E brought it to him, and asked him to take it to a grazing ground for him along with his own oxen, the court should have, at his request, charged on his explanation of his possession.—FARIAS v. STATE, Tex., 45 S. W. Rep. 721.

40. CRIMINAL LIBEL—Evidence.—Evidence of the general rumor and conversation in the neighborhood in regard to the specific acts charged in the alleged libel is inadmissible to show want of malice in the publication.—BALDWIN v. STATE, Tex., 45 S. W. Rep. 715.

41. CRIMINAL PRACTICE—Indictment—Arrest of Judgment.—When, in an indictment containing more than one count, one of the counts is defective, but the evidence adduced will support the good count, a motion in arrest of judgment will not be granted.—CROOK v. STATE, Tex., 45 S. W. Rep. 720.

42. DAMAGES—Permanent Injuries.—In order to recover damages on the ground that an injury is permanent, the evidence must show such permanency with reasonable certainty; and it is error to permit an expert physician to testify that plaintiff was liable to be bothered with the injury for several years, and might be always, at least under certain conditions, such as overuse of the injured member. In an action for personal injuries, evidence of a physician that the effect of consumption in plaintiff's family would cause a strong susceptibility in all of the family to the infection of consumption, particularly in swollen tissues which do not fully recover their normal condition after injury, was inadmissible, where it was not shown that plaintiff was consumptive or reasonably certain of being so.—COLLINS v. CITY OF JANESVILLE, Wis., 75 N. W. Rep. 88.

43. DEATH BY WRONGFUL ACT—Parties—Personal Injuries.—Under Hill's Ann. Code, §§ 369, 371, empowering a decedent's personal representative to maintain an action for wrongful death, a personal representative may recover though the death was instantaneous.—PERHAM v. PORTLAND GEN. ELEC. CO., Oreg., 53 Pac. Rep. 14.

44. DEED—Equitable Mortgage.—A deed absolute in form, intended to secure a debt, is a mortgage, and does not pass title, and under 2 Hill's Ann. Code, § 539, is not a conveyance enabling the grantee thereunder to recover possession of the realty without a foreclosure and sale.—SNYDER v. PARKER, Wash., 53 Pac. Rep. 59.

45. DEED — Recording.—A deed signed, sealed, and acknowledged, which establishes and secures to adjacent lot owners mutual interests in a party wall, is properly admitted to record under the statutes of this State, and is notice to subsequent purchasers of the covenants therein contained.—PARSONS v. BALTIMORE BUILD. & LOAN ASSN., W. Va., 29 S. E. Rep. 999.

46. DIVORCE—Collusion.—It is the duty of a court to see that there is no collusion between parties to a divorce suit; and it may, on its own motion, order witnesses other than those produced by the parties to be subpœnaed and examined, and examine the records in a former suit between the same parties, where a decree was denied, to ascertain the truth or falsity of the charges upon which a divorce is asked.—HOLTON v. HOLTON, Mich., 75 N. W. Rep. 97.

47. EJECTMENT—Pleading.—In an action of ejectment, where the complaint is in the usual form, merely averring ownership in fee in the plaintiff of the premises described, and that he is entitled to the possession, and that the defendant unlawfully withholds the same, evidence of usury in the consideration of a mortgage by virtue of which the plaintiff claimed title is admissible as a defense under the general issue.—COMMONWEALTH TITLE INS. & TRUST CO. OF PHILADELPHIA, PA., v. DOKKO, Minn., 75 N. W. Rep. 106.

48. EQUITY—Mortgage—Property in Hands of Receiver.—Where property is in the hands of a receiver appointed by a court, an independent suit to foreclose a mortgage cannot be maintained, even in the same court.—AMER. LOAN & TRUST CO. v. CENTRAL VERMONT R. CO., U. S. C. C., D. (Vt.), 86 Fed. Rep. 390.

49. EQUITY—Pleadings and Decree.—Where the answer to a bill to invalidate deeds of trust, and for an accounting, controverted all impeachments of the validity of the deeds, and consented to an accounting, but asked no affirmative relief, an order for sale of the realty to satisfy the amount found due, the deeds having been found valid, was erroneous, as being beyond the scope of the pleadings.—GRIFFITH v. SECURITY HOME BUILD. & LOAN ASSN., Tenn., 45 S. W. Rep. 670.

50. EVIDENCE — Execution of Instrument.—Where a paper purports to have been signed by a party, with a subscribing witness thereto, and such subscribing witness is dead, proof of the handwriting of the subscribing witness is *prima facie* evidence of the execution of the paper; but such evidence may be rebutted by the party denying its execution and by outside circumstances.—THOMPSON v. HALSTEAD, W. Va., 29 S. E. Rep. 991.

51. FALSE IMPRISONMENT—Arrest under Valid Warrant.—Arrest under a warrant, valid in form, issued by competent authority on a sufficient complaint, is not false imprisonment, though the indictment under which the warrant was issued was procured maliciously, and by artifice and misrepresentation, for the purpose of extorting money. The proper remedy in such case is not an action for false imprisonment, but for malicious prosecution.—WHITTEN v. BENNETT, U. S. C. C. of App., Second Circuit, 86 Fed. Rep. 405.

52. FEDERAL COURTS—Binding Effect of State Decisions.—The decision of the highest court of a State passing upon the validity of a State statute under the State constitution is not binding upon the federal courts when thereby the validity of a contract, executed before there was a judicial construction of the statute, between the citizen of the State and the citizen of another State, is affected.—JONES v. GREAT SOUTHERN FIREPROOF HOTEL CO., U. S. C. C. of App., Sixth Circuit, 86 Fed. Rep. 370.

53. FEDERAL COURTS—Jurisdiction—National Banks.—An assessment against the estate of an owner of national bank stock, in the hands of his executrix, is enforceable in the federal courts, though proceedings for settlement of the estate are pending in the probate court of Vermont.—BROWN v. ELLIS, U. S. C. C., D (Vt.), 86 Fed. Rep. 357.

54. FRAUD—Evidence—Undue Influence.—The acts of a person who is ill and infirm, but yet capable of understanding fully the nature of what he does, cannot be avoided merely because his near friends and relatives, in whom he places especial confidence, advise their performance, or fairly and honestly exert their influence to that end. In order to avoid such acts, the influence must be unduly exerted for the purpose of obtaining that which the party influenced, if allowed to exercise his own free judgment, would not have granted.—SEWARD v. SEWARD, Kan., 53 Pac. Rep. 68.

55. FRAUDULENT CONVEYANCES—Action by Administrator.—An administrator can maintain an action, on equitable grounds, in behalf of his intestate's creditors, against the widow and children of his intestate, to recover money and other property conveyed to them without consideration by the intestate, while he was insolvent, in fraud of his creditors, where the estate in the administrator's hands is insufficient to pay the debts of the intestate.—WEBB v. ATKINSON, N. Car., 29 S. E. Rep. 949.

56. FRAUDULENT CONVEYANCES—Burden of Proof.—If a mortgage of chattel property, executed and delivered by one relative to another ostensibly to secure the payment of a past-due indebtedness, which, if effectual, will deprive creditors of the mortgagor of satisfaction of their just dues and claims, is attacked as fraudulent,

it devolves upon the party who seeks to assert rights under and by virtue of it to establish the *bona fides* of the transaction evidenced by the instrument,—not only that the debt alleged to have been secured was a true one, but that the other parts of the transaction were with an honest intent, and in good faith.—HEFFLEY V. HUNGER, Neb., 75 N. W. Rep. 53.

57. FRAUDULENT CONVEYANCE—Evidence.—Evidence that a recorded deed, executed without knowledge of the grantee, was not delivered to him until after action to set it aside, and was never intended to be delivered to him except on condition of his immediately making a conveyance back to the grantor, and that the whole transaction was an attempt to place the title beyond the reach of the grantor's creditors, shows that the deed was fraudulent.—SHEBOYGAN BOOT & SHOE CO. V. MILLER, Wis., 75 N. W. Rep. 87.

58. FRAUDULENT CONVEYANCE—Voluntary Conveyance—Impeachment.—A voluntary conveyance cannot be impeached by subsequent creditors on the mere ground of its being voluntary, and of the party making it, or at whose instance it was made, being indebted to some extent. There must be proved by such subsequent creditors an actual fraudulent view or intent by proving additional circumstances sufficient to show fraud in fact.—BRONSON V. VAUGHAN, W. Va., 29 S. E. Rep. 1022.

59. HIGHWAYS—Damages from Unsafe Condition.—A complaint for damages claimed to have been caused by the unsafe condition of a public highway, which alleges only that the highway was about 9 1-2 feet wide, with an unguarded gully about 2 1-2 feet deep on each side, and that plaintiff, while driving a team, and standing on a sleigh loaded with logs, was thrown from the load by the overturning of the sleigh, caused by "its sluing into the ditch on the south side," does not state a cause of action, since it is not alleged the defective character of the road was the cause of the accident.—BODAH V. TOWN OF DEER CREEK, Wis., 75 N. W. Rep. 75.

60. HOMESTEAD—Abandonment.—A widow who, after her husband's death, temporarily removed from her farm, and endeavored to support herself and children, but returned, her farming utensils having remained there meanwhile, did not thereby abandon her homestead.—BRURY V. SMITH, Kan., 53 Pac. Rep. 74.

61. HUSBAND AND WIFE—Alienation of a Wife's Affections.—Where a statement made in answer to a question was a mere conclusion, which was undisputed, its admission was harmless error. One who intentionally persuades another's wife to leave him is liable therefor, without reference to his motives in so doing.—HARTPENCE V. RODGERS, Mo., 45 S. W. Rep. 650.

62. INJUNCTION—Charges against Officers.—In advance of consideration of charges against an officer, by a board having power to hear such charges, and, upon finding them sustained, to remove the officer thereby affected, a court of equity has no jurisdiction, upon the application of such officer, to enjoin action on the pending charges because of prejudice, abuse of discretion, and irregularities in procedure, alleged to be about to be indulged in by such board in the hearing contemplated.—COX V. BOARD OF FIRE & POLICE COMRS. OF CITY OF OMAHA, Neb., 75 N. W. Rep. 35.

63. INJUNCTION — Enforcement of Judgment.—One court cannot restrain by injunction the execution of a judgment of a court of concurrent jurisdiction, except in cases where the court in which the action is pending cannot, for lack of jurisdiction, grant the relief desired.—BECK V. FRANSHAM, Mont., 53 Pac. Rep. 96.

64. INJUNCTION—Parties.—In an action by the grantee of the mortgagor to enjoin the sale of the mortgaged premises under a decree granting a foreclosure, and giving personal judgment against both the mortgagor and his assignee, the mortgagor is a necessary party.—SHELDEN V. MOTTER, Kan., 53 Pac. Rep. 89.

65. INSOLVENCY—Partnership—Conversion.—A trustee of money placed the same in a firm, without the knowledge of his *cestui que trust*. The firm unlawfully converted the money, and was afterwards dissolved by the death of a partner. An administrator of the firm, which was insolvent, was appointed. Held, that the *cestui que trust* was entitled to have the amount of the converted fund charged as a preferred demand.—EVANGELICAL SYNOD OF NORTH AMERICA V. SCHOENEICH, Mo., 45 S. W. Rep. 648.

66. INSURANCE—Other Insurance.—Where a party applying for a policy of insurance fails to inform the insurance agent to whom his application is made that he already has taken out insurance on the property, if such insurance already taken out is void, this fact will not operate to release said second policy.—WOLPERT V. NORTHERN ASSUR. CO., W. Va., 29 S. E. Rep. 1024.

67. INSURANCE—Violation of Conditions.—An agreement in a contract for the insurance of mill property, made in an application for the policy of insurance, "to keep a watchman on the premises at all times when the mill is not in operation," is not violated by the absence of the watchman, in a tent about 200 feet distant from the mill building, for a couple of hours preceding the breaking out of the fire which caused the destruction of the property.—KANSAS MILL OWNERS' & MANUFACTURERS' MUT. FIRE INS. CO. V. METCALF, Kan., 53 Pac. Rep. 68.

68. INTOXICATING LIQUORS—Civil Damages.—Under § 20, ch. 32, Code, a married woman, injured in person, property or means of support, by reason of unlawful sales of intoxicating liquors to a son, may maintain a suit for damages, notwithstanding her husband, father of such son, be living.—MCMASTER V. DYER, W. Va., 29 S. E. Rep. 1016.

69. INTOXICATING LIQUORS—Sale by Club.—Under § 1, ch. 32, Code, it is unlawful for a literary and social club, without first obtaining a State license therefor, to sell, offer or expose to sale, to its members, spirituous liquors, wine, porter, ale or beer, or any drink of a like nature.—STATE V. SHUMATE, W. Va., 29 S. E. Rep. 1001.

70. JOINT TORT-FEASORS—Liability.—Joint tort-feasors sued jointly are not entitled to have the damages assessed against them severally.—NASHVILLE, C. & St. L. RY. V. JONES, Tenn., 45 S. W. Rep. 681.

71. JUDGMENT—Summons.—In a civil action on contract for the recovery of money only, where there is no indorsement upon the summons of the amount for which judgment will be taken if the defendant fails to answer, as provided by § 54, ch. 95, Gen. St. 1897, and the defendant does not appear therein, a judgment rendered upon the service of such summons is voidable only, and not absolutely void.—DUSENBERRY V. BENNETT, Kan., 53 Pac. Rep. 83.

72. JUDGMENT—Joint Judgment.—A judgment otherwise joint in form is not rendered several by a finding as to which of the defendants is the principal debtor, and which are the sureties.—FARNEY V. HAMILTON COUNTY, Neb., 75 N. W. Rep. 44.

73. JUSTICE COURT—Jurisdiction—Presumptions.—In judicial proceedings before a justice of the peace, the presumption is that he has done his duty, and this presumption exists in favor of the regularity of his proceedings where he has jurisdiction, as in courts of record.—ELLEGAARD V. HAUKAAS, Minn., 75 N. W. Rep. 128.

74. LANDLORD AND TENANT—Estoppel.—A tenant under a contract of purchase, as well as her husband, whose possession is in her right, is estopped, in an action in ejectment, to show, as against her landlord, title in another, acquired through her wrong.—HUBBARD V. SHEPARD, Mich., 75 N. W. Rep. 92.

75. LANDLORD AND TENANT—Oil Lease—Construction.—A lease for the purpose of operating for oil and gas for the period of five years, and so much longer as oil or gas is found in paying quantities, on no other consideration than prospective oil royalty and gas rental, vests no present title in the lessee except the mere right of exploration; but the title thereto, both as to the period of five years and the time thereafter, remains inchoate and contingent on the finding, under

the explorations provided for in such lease, oil and gas in paying quantities.—STEELSMITH v. GARTLAN, W. Va., 29 S. E. Rep. 978.

76. LANDLORD AND TENANT—Tenant at Will.—A tenant at will is the owner of the premises he occupies, until his tenancy has been terminated by a notice from his landlord to vacate, and an entry of the landlord for any other purpose while the tenancy exists is unauthorized.—ELLIOTT v. STATE, Tex., 45 S. W. Rep. 711.

77. LANDLORD'S LIEN—Enforcement—Parties.—In an action by a landlord, to enforce his rights under the statute giving to him a lien on the crop for rent, against a purchaser from the tenant, it is not error for the trial court to refuse to make the tenant a party defendant.—GILL v. BUCKINGHAM, Kan., 52 Pac. Rep. 897.

78. LIFE INSURANCE—Conflict of Laws—Right to Fund—Creditors of Insured.—A life insurance policy issued in Alabama, to a resident of that State, by a company whose home office is in New Jersey, is governed by the laws of Alabama.—ROBERTS v. WINTON, Tenn., 45 S. W. Rep. 673.

79. LIFE INSURANCE—Limitations in Policy.—A stipulation in an insurance contract that legal proceedings to recover thereon must be brought within six months from date of death of assured is valid, and an action commenced on such a contract eleven months after death will not lie.—GRIEM v. FIDELITY & CASUALTY CO., Wis., 75 N. W. Rep. 67.

80. LIFE INSURANCE—Right to Fund—Distribution.—The provisions of Code, §§ 2294, 2478 (Mill. & V. Code, §§ 3135, 3335; Shannon's Code, §§ 4030, 4231), that insurance effected by a husband on his own life inures to the benefit of his widow and next of kin, free from the claims of his creditors, does not apply to insurance held by an unmarried man.—WRIGHT v. WRIGHT, Tenn., 45 S. W. Rep. 672.

81. MALICIOUS PROSECUTION—Termination of Action—Probable Cause.—An allegation, in an action for malicious prosecution, that the prosecution on which the action is based has been finally determined in plaintiff's favor, is sufficient, without alleging, in addition, the means, as by writ of *habeas corpus*, by which that end was accomplished.—HOLLIDAY v. HOLLIDAY, Cal., 53 Pac. Rep. 42.

82. MASTER AND SERVANT—Defective Appliances—Knowledge.—In a petition to recover from a railroad company for a personal injury received by a fireman in consequence of defects in the locomotive upon which he is employed, it is necessary to allege that he had no knowledge of such defects, or that, having such knowledge, he informed his superior, and continued in the service relying upon his promise to remedy the defects.—HESSE v. COLUMBUS, S. & H. R. Co., Ohio, 50 N. E. Rep. 354.

83. MASTER AND SERVANT—Negligence—Assumption of Risk.—A master who, under Burns' Rev. St. 1894, §§ 7466, 7472, 7473, relating to the safety of miners, owes his servant the duty of providing a safe place for him to work, is not relieved from liability for his negligence by the servant's negligence, or notice of danger and assumption of the risk.—BOYD v. BRAZIL BLOCK COAL CO., Ind., 50 N. E. Rep. 368.

84. MASTER AND SERVANT — Negligence—Dangers—Warning.—A master placing an inexperienced boy under the command of a fellow-servant, without warning the boy of the hazard of his work, is liable for injuries to the boy, caused by the co-employee's failure to warn him.—KELLER v. GASKELL, Ind., 50 N. E. Rep. 363.

85. MASTER AND SERVANT — Vice-principal—Fellow-servant.—It is the duty of a master to furnish its employees with a reasonably safe place at which to work, and if it delegates to another the duty of selecting material or the building of a scaffold, such delegated person becomes a vice-principal, for whose acts it is responsible. A servant to whom the master intrusts the duty of selecting appliances for other servant to work with is not their fellow-servant, so as to prevent liability of the master to them for injuries caused by his negligence in performing that duty.—KANSAS CITY CAR & FOUNDRY CO. v. SAWYER, Kan., 53 Pac. Rep. 90.

86. MECHANIC'S LIEN—Subcontractor's Lien.—A subcontractor's lien cannot, to the prejudice of the proprietor, be extended so as to cover for work not included in the principal contract as originally drawn or subsequently modified, or to damages for mistakes or negligence of the principal contractor, or breaches of contract on his part.—SIEBRECHT v. HOGAN, Wis., 75 N. W. Rep. 71.

87. MORTGAGES—Foreclosure—Satisfaction.—In an action to foreclose a mortgage given in place of another mortgage which had been canceled, where the court permitted defendants to elect which of the two mortgages was to be foreclosed, and they elected the first one, they could not question the right of the court to decree a foreclosure of the prior mortgage after its satisfaction.—CONKLIN v. BUCKLEY, Wash., 53 Pac. Rep. 52.

88. MORTGAGES—Satisfaction—Title.—Upon the satisfaction of a mortgage debt, the legal title to the land covered reverts *eo instante* by operation of law to the mortgagor or his heirs.—VAUGHN v. VAUGHN, Tenn., 45 S. W. Rep. 677.

89. MORTGAGE—Trust Deed—Lien—Priority.—Where the owner of real estate has executed a valid deed of trust upon the same to secure the payment of a loan (which is evidenced by note or bond) contracted to be paid in installments, which have not yet matured, when a creditor obtains a judgment against the grantor in said trust deed, and proceeds to enforce his judgment lien in a court of equity, he can only subject the equity of redemption; and the court has no power to change the terms and conditions of the deed of trust as to the maturity of the loan thereby secured.—WISE v. TAYLOR, W. Va., 29 S. E. Rep. 1003.

90. MORTGAGE—Usury.—Where the maker of a note and mortgage sues to have them canceled on the ground of no consideration, and to recover usurious interest paid, and charges collusion between the defendants, evidence by one defendant that the note was given him for money borrowed by plaintiff to pay an indebtedness to the other defendant does not necessarily establish that fact if rebutted by circumstantial evidence that there was collusion between the defendants, and that the money borrowed was returned by the one to whom it was paid.—BAUM v. THOMS, Ind., 50 N. E. Rep. 357.

91. MUNICIPAL CORPORATIONS — Injury to Abutting Property.—An abutting lot owner, on whose lot a fill has been made by the city in improving a street, may recover of the city the damage, if any, sustained thereby, and by the destruction of her fencing and trees, unless the fill was made by her consent; and in that event she can recover nothing on that account.—CITY OF LUDLOW v. TROSTE, Ky., 45 S. W. Rep. 661.

92. MUNICIPAL CORPORATION—Ordinances—Nuisance.—A town ordinance is not void, for discrimination, which prohibits a citizen from keeping hogpens within 100 yards of the residence of another, but does not prohibit him from keeping them within the same distance of his own.—STATE v. HORD, N. Car., 29 S. E. Rep. 952.

93. MUNICIPAL CORPORATION—Rights and Duties Outside of State.—A city is not liable for a defective highway outside the State, though it constructed it under an act of the other State giving it the right to do so, and declaring it liable for damages from improper construction and repair; its acts in this regard being *ultra vires*.—BECKER v. CITY OF LA CROSSE, Wis., 75 N. W. Rep. 84.

94. OFFICE AND OFFICERS—Fees to Public Officers.—To warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute.—CLARK v. BOARD OF COMRS. OF LUCAS COUNTY, Ohio, 50 N. E. Rep. 356.

95. PLEADING—Contingent Promise.—Where the promise of a party to pay the debt of another is expressly

contingent upon the happening of a certain event, the happening of such event must be alleged and proved, to render the promisor liable.—HUSENETTER v. GULLIKSON, Neb., 75 N. W. Rep. 41.

96. PRINCIPAL AND AGENT—Factors.—Defendants, as tobacco warehousemen, having received tobacco which plaintiff had consigned to another warehouse, but the direction of which was changed by fraud while in the possession of the carrier, cannot escape liability to plaintiff for the value of the tobacco by showing that they paid the proceeds to a person falsely representing himself to be the plaintiff; and this is true though the carrier was also negligent.—IRVIN v. PHELPS, Ky., 45 S. W. Rep. 659.

97. PROCESS — Service — Privilege.—A non-resident who comes into the State for the sole purpose of attending a litigation either as suitor or as witness is exempt from service of civil process during his coming, his stay, and a reasonable time for returning.—COOPER v. WYMAN, N. Car., 29 S. E. Rep. 947.

98. QUO WARRANTO—Usurpation of Office.—In a proceeding by way of an information in the nature of a writ of *quo warranto* against a person who is claimed to have intruded into or usurped the office of sheriff of a county, such proceeding must be at the relation of some person interested, otherwise than as a citizen and taxpayer, unless such proceeding is instituted at the instance of the attorney-general or the prosecuting attorney of the county.—STATE v. MATTHEWS, W. Va., 29 S. E. Rep. 994.

99. RAILROAD COMPANY—Insolvency and Receivers.—Where supplies have been furnished to a railroad company, which were essential to enable its lines of road to be operated as a continuing business—such as coal—and it was the expectation of the creditors that the indebtedness created would be paid from the current earnings of the road, as against holders of bonds secured by mortgage on the property, a superior equity arises in favor of such creditors in the income of the property, both before and after it passes into the hands of a court by the appointment of a receiver, and until it is finally sold in foreclosure; and it is immaterial to the rights of such creditors to be paid from surplus earnings in the hands of a receiver, whether or not income had been directed by the company prior to the receiver's appointment, either for the benefit of the bondholders or otherwise.—VIRGINIA & A. COAL CO. v. CENTRAL RAILROAD & BANKING CO. OF GEORGIA, U. S. S. C., 18 S. C. Rep. 657.

100. RAILROAD COMPANY—Negligence.—Where it is the practice of the post-office employees to throw mail pouches from moving trains onto passenger station platforms, so as to endanger passengers, it is the duty of the railroad company to notify passengers of the danger, and take such further steps as may be necessary to prevent the continuance of the practice; but this duty does not arise until the railroad company has had notice of such practice, either express or implied, from its long continuance.—SOUTHERN RY. CO. v. RHODES, U. S. C. C. of App., Sixth Circuit, 86 Fed. Rep. 422.

101. RAILROAD COMPANY—Negligence.—Deceased went on the track of defendant in a depot shed containing five tracks, which was not lighted by defendant, and was dark. The shed was a place of common resort for townspeople, and there was a frequented passway across the tracks used by consent of defendant. Deceased was standing on the passway, when defendant's freight train, which was four hours late, backed under the shed, without light or flagman, at the rate of four miles an hour, and ran over him. Held to raise an issue of negligence for the jury.—PURNELL v. RALEIGH & G. R. Co., N. Car., 29 S. E. Rep. 953.

102. RECEIVERS—Operating Expenses—Lien.—Pending a partnership accounting, a receiver was appointed to take charge of an hotel. The hotel and furniture and fixtures were sold, under foreclosure of a trust deed, to complainant, who was one of the partners. Pending appeal by the other partner from an order confirming the sale, complainant agreed that the receiver might continue to operate the hotel. Held, that those who furnish coal and groceries to the receiver pending said appeal were entitled to an order for the sale of the furniture and fixtures to pay their claims.—KNICKERBOCKER v. MCKINDLEY COAL & MINING CO., Ill., 50 N. E. Rep. 831.

103. RESIDENCE—Loss by Leaving State.—Where a husband and wife have lost their residence in this State, the wife cannot regain her residence immediately by returning to the State on the death of her husband.—IN RE WEED'S ESTATE, Cal., 53 Pac. Rep. 30.

104. RES JUDICATA.—The wrongful taking of property under a writ is a violation of official duty for which sureties on a sheriff's official bond are liable, and an unsatisfied judgment against the sheriff for the trespass does not bar an action against the sureties, the latter remedy being cumulative.—GRAY v. NOONAN, Ariz., 53 Pac. Rep. 8.

105. RES JUDICATA—Adverse Possession.—Where two deeds of trust are given on land by husband and wife, the fee belonging to her, with a life estate in the husband as husband, and a part of it is afterwards conveyed by them to a third party, and there is a chancery suit to enforce the said trusts against the entire tract and sell it outright, and the purchaser of such part is a party and his rights set up therein, and there is a decree exonerating that part from liability for one of the trusts, such decree is *res judicata* to bar another suit to sell the life estate of the husband in such part for that debt.—PICKENS v. LOVE'S ADMR., W. Va., 29 S. E. Rep. 1018.

106. RES JUDICATA—Parties and Questions Concluded.—A member of a partnership in Brussels formed a partnership with a New Yorker, and the Brussels firm supplied to the New York firm its stock in trade. On the dissolution of the New York firm the Brussels firm sued the New York partner for an accounting of the partnership affairs, and to recover a balance alleged to be due. Before judgment the other partner in the Brussels firm died. On the accounting it was found that the New York firm was indebted to the Brussels firm in a specified amount, and judgment was given for plaintiff accordingly. Held that, as at the date of judgment the complainant was sole surviving partner of the Brussels firm, he was the real party in interest, so that the finding as to the amount due from the New York to the Brussels firm was conclusive, and could not be questioned in a subsequent suit by the New York member against the Brussels member as surviving partner of the Brussels firm.—MALOY v. DUDEN, U. S. C. C. of App., Second Circuit, 86 Fed. Rep. 402.

107. SALE—Bill of Sale—Title Acquired.—In the absence of fraud, the execution of a bill of sale is sufficient to pass title, though the instrument is not recorded and possession not delivered.—CASENTINI v. GALVESTON FRUIT CO., Tex., 45 S. W. Rep. 756.

108. SALE—Rescission — Fraud.—To entitle one to rescind a contract of sale on the ground that he was induced to enter into the same through the false representations of the other party, it is unnecessary to establish that the party making the representations at the time knew they were false and untrue.—FIELD v. MORSE, Neb., 75 N. W. Rep. 58.

109. SALE—Warranty — Examination.—One who purchases, for the purpose of resale (this purpose being known to the seller), goods expressly warranted as to quality, is not bound to examine the same, with a view to detecting latent defects, before making a resale, but may do so on the faith of the warranty under which he bought. (a) It was therefore, in the present case, error to charge, in effect, that it was incumbent on the defendant to exercise ordinary care in discovering the alleged latent defects in the goods which he had purchased from the plaintiffs, before selling the same to others.—HALTIWANGER v. TANNER, Ga., 29 S. E. Rep. 965.

110. SALE OF GOODS — Reservation of Title.—Under Rev. St. 1895, art. 2549, which provides that all reserva-

tions of the title to chattels after delivery to the buyer shall be held to be mortgages, and "void as to creditors and *bona fide* purchasers" unless registered, such an agreement is good against an assignee or creditors taking the property under a general assignment.—MANSUR & TEBBETTS IMPLEMENT CO. v. BEEMAN ST. CLAIR CO., Tex., 45 S. W. Rep. 729.

111. SPECIFIC PERFORMANCE.—Specific performance of a contract for the purchase and sale of real property, wherein time is made expressly of the essence thereof, will not be adjudged to the vendor, where he has wholly failed to perform or tender performance upon his part for a period of more than five years after the time fixed therefor by the contract, and especially so where there has been in the meantime a great change in the condition and market value of the property.—JOHNSON v. BURDETT TOWN CO., Kan., 53 Pac. Rep. 87.

112. STATUTES — Construction.—Where there was an abortive attempt made by subsequent legislation to limit the operation of an existing statute, such statute must be deemed to have the force it would have possessed if no limitation of it had been attempted.—BARKER v. POTTER, Neb., 75 N. W. Rep. 57.

113. TAX SALE — Purchase by State.—After the State has, at a tax sale, bid in the land for the taxes of one year, it is not obliged to obtain a tax judgment, and sell the land for the delinquent taxes of each subsequent year. Whether it may be so, *quære*. In any event, its lien for such subsequent taxes does not lapse by reason of the failure to do so. And, several years after such subsequent taxes became delinquent, the State may, by a State assignment, transfer to a private person its lien for the same, together with its claim under the tax sale at which it bid in the land.—BERGLUND v. GRAVES, Minn., 75 N. W. Rep. 118.

114. TRESPASS—Right of Way—Easement.—The owner of land subject to a right of way erected a fence intersecting the right of way, and put in a gate of sufficient width where it crossed. The land north of said fence on both sides of the road was pasture land, and that south thereof, plow land; and neither was suitable for any other purpose, nor unless fenced apart. The easement was acquired by prescription when the land was unfenced. Held not an infringement of such right of way.—DYER v. WALKER, Wis., 75 N. W. Rep. 79.

115. TRIAL—Damages — Physical Examination.—Defendant in an action for personal injuries has, in the absence of statute, no absolute right to a personal examination of the injured party by physicians, but such right rests in the sound discretion of the trial court.—O'BRIEN v. CITY OF LA CROSSE, Wis., 75 N. W. Rep. 81.

116. TRUSTS—Equitable Jurisdiction.—A court of equity has jurisdiction to break in upon, and change the terms of, a trust, when by so doing it will lend aid to the accomplishment of the donor's desires, or in cases of urgent necessity.—JOHNS v. JOHNS, Ill., 50 N. E. Rep. 387.

117. TRUST DEEDS — Interest Notes—Usury.—A trust deed was not usurious because it provided that, in case of default in the payment of the notes secured thereby, or any part thereof, or in the payment of taxes, foreclosure proceedings might be brought, and decree obtained, and the property sold, and that out of the proceeds the cost of suit, and a certain amount for solicitor's fees, etc., might be allowed.—ABBOTT v. STONE, Ill., 50 N. E. Rep. 328.

118. TRUST FUNDS—Deposit in Bank — Insolvency.—An assignee for the benefit of creditors deposited funds collected as such assignee with a bank during a period of about eight months, and the bank's officers were fully aware of the nature of the deposits, and used them in the payment of the bank's debts, and did not during the time when those deposits were made increase its assets, and no property of any kind was acquired with the funds deposited. Held, after an assignee for the benefit of creditors had been appointed for the bank, that these facts do not bring the case within the rule that, when trust money has been received, it must appear that it has been preserved in some form in the hands of the assignee, from which it may be taken without impairment of the rights of creditors before the claim of the depositor will be preferred.—JONES v. CHESEBROUGH, Iowa, 75 N. W. Rep. 98.

119. VENDOR AND PURCHASER—Deficiency in Land Sold.—A party purchasing lots on the margin of a town site purchases only the land contained within said lots, and cannot recover from a grantor a sufficient amount of land owned by said grantor adjoining said lots outside the limits of said town site to make up a deficiency in the size thereof.—CLARK v. FARNWORTH, Kan., 53 Pac. Rep. 93.

120. VENDOR AND PURCHASER—Foreclosure.—A decree of strict foreclosure of contracts of sale and purchase of real estate or forfeiture of the vendee's rights thereunder will be accorded only by reason of the existence of peculiar and special facts and circumstances. Application for relief of the nature just indicated are addressed to the sound legal discretion of the court, and will be granted if it would be inequitable and unjust to refuse them.—FARMERS' & MERCHANTS' STATE BANK OF BEATRICE v. THORNBURG, Neb., 75 N. W. Rep. 45.

121. WARRANTIES—Waiver of Forfeiture.—Where a clause in a warranty provided that "if the purchaser does not make full settlement, in cash or approved notes, for the machine, on its delivery to him, he thereby waives all claims under this warranty," the fact that the machine was delivered by the seller on the buyer's premises, without requesting settlement by note, and a note was accepted a month thereafter, and retained by the seller, with full knowledge of all the facts, constitutes a waiver of the seller's right to rely on said clause.—TRAPP v. NEW BIRDSALL CO., Wis., 75 N. W. Rep. 77.

122. WILLS—Contingent Remainder.—Where a tract of land is left by will to the testator's wife, and "at her death the said land is to be divided between my heirs at law," the land will go to those who are the testator's heirs at law at the death of the life tenant, and the remainder is contingent at the testator's death.—FORREST v. PORCH, Tenn., 45 S. W. Rep. 676.

123. WILLS—Devise of Homestead.—Under the terms of Gen. St. 1894, § 4470, a testamentary disposition of the statutory homestead, assented to in writing by a surviving husband or wife, will not render the property liable to the satisfaction of the debts of the testator.—EKSTEIN v. RADL, Minn., 75 N. W. Rep. 112.

124. WILLS—Husband and Wife—Descent and Distribution.—Words of survivorship, where the devise is to several persons by name, refer to the testator's death, if the gift is to take effect in possession at that time, and the devisees then living take an absolute fee.—CARPENTER v. HAZELRIGG, Ky., 45 S. W. Rep. 666.

125. WITNESS—Evidence as to Character.—A mere conflict between the testimony of two witnesses does not admit one of them being supported by evidence as to his general reputation for truth and veracity.—HARRIS v. STATE, Tex., 45 S. W. Rep. 714.

126. WITNESS—Impeachment — Cross-examination.—For the purpose of judging the character and credit of a witness, he may be cross-examined as to specific facts tending to disgrace or degrade him, although collateral to the main issue, and touching on matters of record.—STATE v. GREENBURG, Kan., 53 Pac. Rep. 61.

127. WITNESS—Transactions with Decedent.—In an action to foreclose a mortgage assigned by a deceased administrator during his lifetime, as security for a balance which he owed the estate, testimony of defendant that the administrator, after the execution of the mortgage, agreed to take the mortgaged land in fee, and defendant's note for a smaller sum in payment of the secured debt, was incompetent, under Code, § 590, relating to testimony of a party in interest as to his transactions with a person who has since died.—POSTON v. JONES, N. Car., 29 S. E. Rep. 951.